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INTERNATIONAL JOINT COMMISSION

REPORT

OF THE
INTERNATIONAL JOINT COMMISSION

TO THE GOVERNMENTS OF THE UNITED STATES AND CANADA
ON THE SOURIS RIVER, WITH SPECIAL REFERENCE TO THE
INTERIM MEASURES RECOMMENDED IN ITS REPORT OF
2 OCTOBER, 1940.

Ottawa-Washington
19 March 1958

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1. The purpose of this report is to present recommendations for amending certain of the interim measures which were recommended in the Commission's report dated 2 October 1940; were accepted by the Governments of the United States and Canada on 28 March 1941 and 25 April 1941, respectively; and which, with changing times and altered circumstances, have now been found to require modification to meet the needs of those concerned.

ORIGINAL REFERENCE ON SOURIS RIVER

2. Under date of 15 January 1940, the governments of the United States and Canada submitted a reference to this Commission reading in part as follows:

"I have the honour to inform you that the Governments of Canada and the United States have agreed to refer to the International Joint Commission, under the provisions of Article IX of the Boundary Waters Treaty, 1909, for investigation, report, and recommendation, the following questions with respect to the waters of the Souris (Mouse) River and its tributaries which cross the International Boundary from the Province of Saskatchewan to the State of North Dakota and from the State of North Dakota to the Province of Manitoba:-

"Question 1

In order to secure the interests of the inhabitants of Canada and the United States in the Souris (Mouse) River drainage basin, what apportionment should be made of the waters of the Souris (Mouse) River and its tributaries, the waters of which cross the international boundary to the Province of Saskatchewan, the State of North Dakota, and the Province of Manitoba?

"Question 2

What methods of control and operation would be feasible and desirable in order to regulate the use and flow of the waters of the Souris(Mouse) River and of the tributaries, the waters of which cross the international boundary, in accordance with the apportionment recommended in the answer to Question 1?

"Question 3

Pending a final answer to Questions 1 and 2, what interim measures or regime should be adopted to secure the foregoing objects?

1940 INTERIM REPORT UNDER THE REFERENCE

3. On 2 October 1940, the Commission submitted a report under the foregoing reference recommending the following interim measures pending completion of the additional investigations necessary for settlement of the questions in the reference:

"1. The Province of Saskatchewan shall be permitted to continue its present use of the waters of the Souris River, and, in addition, to construct a reservoir with usable capacity not exceeding 4,000 acre feet, for the purpose of providing an adequate water supply for the town of Weyburn and the mental hospital at Weyburn.

"2. The State of North Dakota shall be permitted to continue its present use of the waters of the Souris River, and, in addition, to construct a small reservoir on Long Creek, with capacity of 200 acre feet, to provide an adequate water supply for the town of Crosby, North Dakota.

"3. A regulated flow of not less than 10 cubic feet per second shall be released from the State of North Dakota to the Province of Manitoba during the months of June, July, August, September and October of each year.

"4. In the event that the State of North Dakota or the Province of Saskatchewan should desire to construct any additional storage works, or otherwise make additional use of the waters of the Souris River basin, application shall be made to the International Joint Commission for authority

to construct the desired storage works or otherwise to make use of additional water.

"5. The interim measures for which provision is hereinbefore made shall remain in effect unless subsequently qualified or modified by the Commission prior to the adoption of permanent measures in accordance with the requirements of questions (1) and (2) of the reference".

APPROVAL OF 1940 REPORT BY THE TWO GOVERNMENTS

4. The above recommendations were approved by the governments of the United States and Canada on 28 March, 1941 and 25 April, 1941, respectively.

5. On 17 November 1942, the Commission issued an Order modifying paragraph 3 of the Interim Measures recommended in the report of 2 October 1940, by increasing the regulated flow to be released to the Province of Manitoba from 10 cubic feet per second to 20 cubic feet per second.

ACTION OF THE COMMISSION UNDER THE
APPROVED RECOMMENDATIONS

6. By resolution dated 26 May, 1943, the Commission clarified item 4 of the above recommendations as follows:

"It was also decided that the Province of Saskatchewan and the State of North Dakota should be informed that the words "storage works, or otherwise make additional use of the waters of the Souris River basin" are intended to include dugouts and small domestic stockwatering dams or other projects approved by the appropriate Provincial or State authorities; and that the Province of Saskatchewan and the State of North Dakota may at any time make application for approval of dugouts and small domestic stock-watering dams or other projects approved by the appropriate Provincial or State authorities, of a total capacity in Saskatchewan and a similar capacity in North Dakota, of 1000 acre feet annually and that as a matter of convenience such applications should cover substantial groups."

7. To date, the Commission has approved a number of applications for small projects which now aggregate 603.7 acre feet in Saskatchewan and 710.82 acre feet in North Dakota.

8. On 7 October, 1947, the Commission approved an Application

by the Prairie Farm Rehabilitation Administration of Canada for the diversion of water from Long Creek to Maxim Lake for stock-watering purposes, subject to operation regulations to be recommended by the International Souris River Board of Control. Such recommendations were subsequently submitted by the Board and were approved by the Commission on 13 October, 1949.

9. By an Order of Approval dated 26 January 1949, the Commission authorized the Northern States Power Company, subject to stated conditions, to erect a dam in the Souris(Mouse) River at Minot, N.D., to provide cooling water for a small steam-electric power plant, the consumptive use of water to be not more than 430 acre feet annually. The dam has not been constructed.

1952 INTERIM REPORT RE CITY OF MINOT, N.D.

10. In an Interim Report to the Governments of the United States and Canada, dated 9 October, 1952, the Commission recommended that it be authorized to adopt an Order approving an application by the City of Minot, N.D. to divert water from the Souris River for domestic and municipal water-supply purposes, subject to certain conditions. The Commission also recommended that the application of the City of Minot and any future applications for diversion of water from the Souris River, other than for water supply dugouts, small stockwatering pools and small irrigation projects, which the State of North Dakota or the Province of Saskatchewan may specify, be considered outside of the one thousand (1000) acre-foot limitation specified in the Commission's resolution of 26 May, 1943.

11. The two Governments duly approved the Commission's recommendations and on 26 January, 1956, the Commission issued an Order of Approval authorizing, subject to stated conditions, the City of Minot to divert water from the Souris River, for domestic and other municipal purposes, at a rate not exceeding 9.25 cubic feet per second and not exceeding 6,700 acre feet per year; a high percentage of the water to be returned to the stream as return flow.

SUBSEQUENT APPLICATIONS TO THE COMMISSION

12. On 30 May, 1955, the Province of Saskatchewan applied to the Commission for authority to construct a dam on Long Creek, a tributary of the Souris River, which would create a reservoir having a capacity of 48,470 acre-feet. The impounded water would be used for municipal and industrial purposes, including cooling

purposes in the new thermal power plant of the Saskatchewan Power Corporation at Estevan.

13. On 30 June, 1955, the Town of Radville, Saskatchewan, applied to the Commission for authority to construct a reservoir to store 480 acre-feet of water from a tributary of Long Creek and to use therefrom 108 acre-feet per annum for domestic and municipal water supply purposes.

14. At its executive session in Washington on 6 April, 1956, the Commission was informed of Saskatchewan's plans to proceed with construction of the dam on Long Creek and the dam at Radville.

15. On 24 September, 1955, the City of Minot, N.D., in order to provide for present and estimated future municipal water supply requirements to the year 1970, applied to the Commission for authority to increase the diversion of water from the Souris River, up to an additional 6,700 acre-feet annually at a maximum additional rate of 9.25 cubic feet per second and subject to the return to the stream of an estimated 75 per cent of the diverted water. The application has not as yet been recommended by the Commission.

16. The Secretary of State for External Affairs for Canada addressed a communication to the Commission under date of 6 August, 1957, with which was enclosed a letter dated 10 June, 1957, from the Minister of Agriculture of the Province of Saskatchewan. Copies of these letters are attached hereto as Appendix A and Appendix B respectively.

VIEWS OF THE COMMISSION

17. Application of the interim measures recommended in the Interim Report of 2 October 1940 has enabled the Commission to accumulate the more dependable and informative stream flow data and other information contemplated in that report as being required in order that the Commission might reach final answers to the questions asked by the Governments in the Reference of 15 January 1940. The extensive and comprehensive stream flow data and other information which has since been secured is believed to now present an adequate and proper basis from which to derive a solution to these questions before the Commission. Further consideration of other factors will be required, however, before the Commission can make a final report to the two Governments under the 1940 Reference.

18. The Commission has concluded that the continued application of the interim measures recommended in 1940 may well constitute an obstacle to the development of Saskatchewan and North Dakota.

19. The evidence obtained by the Commission in the course of its studies under the Reference indicates that the meager water supply of the Souris River basin is insufficient to satisfy the demands which already exist.

20. The interim measures for apportionment hereinafter recommended recognize as a first objective the importance of making water available for human and livestock consumption and for household use. These measures also recognize that once they are in effect the use of water within a Province or State will be under the exclusive jurisdiction of that political entity and that each Province or State may then utilize its share of the water in accordance with its own laws governing the use of water.

21. The Commission proposes to appoint a joint board of engineers, consisting of two members, one from the United States and one from Canada, to be officially designated as the International Souris River Board of Control; the board to be charged, during the intervening period prior to the adoption of permanent measures, with the responsibility of ensuring compliance with the interim measures set out hereinafter, and of submitting to the Commission such reports as the Commission may require, or as the board in its discretion may desire to file.

RECOMMENDATIONS

22. The Commission recommends that it be authorized to create the Board referred to in para. 21 above and that the two Governments approve the following interim measures in substitution for the interim measures which were recommended in the report dated 2 October 1940 and heretofore approved:

1. The Province of Saskatchewan shall have the right to divert, store, and use waters which originate in the Saskatchewan portion of the Souris River basin, provided that such diversion, storage and use shall not diminish the annual flow of the river at the Sherwood Crossing more than fifty per cent of that which would have occurred in a state of nature. For the benefit of riparian users of water between the Sherwood Crossing and the upstream end of Lake Darling, the Province of Saskatchewan shall so far as practicable

regulate its diversions, storage, and uses in such manner that the flow in the Souris River channel at the Sherwood Crossing shall not be less than four (4) cubic feet per second when that much flow would have occurred under the conditions of water use development prevailing in the Saskatchewan portion of the Souris River basin prior to construction of the Long Creek dam referred to in paragraphs 12 and 14 above.

(2) Except as otherwise provided herein with respect to delivery of water to the Province of Manitoba, the State of North Dakota shall have the right to divert, store, and use the waters which originate in the North Dakota portion of the Souris River basin together with the waters delivered to the State of North Dakota at the Sherwood Crossing under Recommendation (1) above; Provided, that any diversion, use or storage of Long Creek water shall not diminish the annual flow at the eastern crossing of Long Creek into Saskatchewan below the annual flow of said Creek at the western crossing into North Dakota.

(3) (a) In addition to the waters of the Souris River basin which originate in the Province of Manitoba, that Province shall have the right, except during periods of severe drought, to receive for its own use and the State of North Dakota shall deliver from any available source during the months of June, July, August, September, and October of each year, six thousand and sixty-nine (6,069) acre-feet of water at the Westhope Crossing regulated so far as practicable at the rate of twenty (20) cubic feet per second except as set forth hereinafter: Provided, that in delivering such water to Manitoba no account shall be taken of water crossing the boundary at a rate in excess of the said 20 cubic feet per second.

(3) (b) In periods of severe drought when it becomes impracticable for the State of North Dakota to provide the foregoing regulated flows, the responsibility of the State of North Dakota in this connection shall be limited to the provision of such flows as may be practicable, in the opinion of the said Board of Control, in accordance with the objective of making water available for human and livestock consumption and for household use. It is understood that in the circumstances contemplated in this paragraph the State of North Dakota will give the earliest possible advice to the International Souris River Board of Control with respect to the onset of severe drought conditions.

(4) In event of disagreement between the two sections of the International Souris River Board of Control, the matters in controversy shall be referred to the Commission for decision.

(5) The interim measures for which provision is herein made shall remain in effect until the adoption of permanent measures in accordance with the requirements of questions (1) and (2) of the Reference of 15 January, 1940, unless before that time, these interim measures are qualified or modified by the Commission.

Signed this nineteenth day of March, 1958.

(signed) A.G.L. McNaughton
 Douglas McKay
 J. Lucien Dansereau
 Roger B. McWhorter
 D.M. Stephens
 Eugene W. Weber

APPENDIX "A"

THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS

Canada

Ottawa, August 6, 1957.

Dear Madam:

I am enclosing a copy of a letter dated June 10, 1957, from the Minister of Agriculture for the Province of Saskatchewan concerning the Souris River Reference of January 25, 1940. *

The Government of Saskatchewan states that the interim measures recommended by the Commission in 1940 are delaying development in the Souris River watershed in Saskatchewan. Accordingly, it does not wish to be inhibited any longer by these interim measures. At the same time, the Provincial Government is willing to permit for the present the continued passage of fifty per cent of the natural flow of the water at Sherwood Crossing to allow the International Joint Commission a further opportunity to reach agreement upon recommendation for a permanent settlement of the matters contained in the 1940 Reference.

The Canadian Government considers that the application of the interim measures during the past 16 years has provided opportunity to extend the period of stream flow data beyond that contemplated by the Commission or the governments and believes that the accumulation of further records is not essential to a solution of the questions before the International Joint Commission.

The Canadian Government agrees with the view expressed by the Government of Saskatchewan that the interim measures of 1940 are an obstacle to the development of southeast Saskatchewan. Furthermore, the statement by the Province of Saskatchewan that

Miss E.M. Sutherland,
Secretary, Canadian Section,
International Joint Commission,
Ottawa, Ontario.

Note * 25 January 1940 should read 15 January 1940.

it intends to permit fifty per cent of the natural flow of Souris water in Saskatchewan into North Dakota at Sherwood Crossing is a generous offer. In consequence, the Government of Canada requests that the interim measures recommended by the Commission be modified in accordance with paragraph 7 of the enclosed letter from the Province of Saskatchewan.

Relaxation of the restrictions imposed on Saskatchewan by the interim measures will not, of course, affect materially the substance of the Reference of 1940. It is therefore the hope of the Canadian Government that the Commission will be able to reach early agreement on a recommendation for the apportionment of the waters of the Souris River Basin among the three political entities involved.

Yours sincerely,

(signed) J.G. Diefenbaker

MINISTER OF AGRICULTURE

Saskatchewan

June 10, 1957.

Mr J. Leger,
Under-Secretary of State for External Affairs,
OTTAWA, Ontario.

Dear Mr Leger:

Re: Souris River Reference of 25 January 1940 *
to the International Joint Commission

The International Joint Commission's Report of 2 October 1940 recommended that, in view of the incompleteness of available stream flow data, certain "interim measures" should be adopted which would restrict the use of Souris River waters, pending permanent settlement of the questions presented in the above reference.

After consultation with the Government of Saskatchewan, the Canadian Government approved the Commission's recommendations. Although the effect of the recommendations was to restrict future uses of Souris River waters in Saskatchewan to 1000 acre feet annually for dug-outs and small domestic stockwatering dams, the Government of Saskatchewan agreed with the Canadian Government that it would accept this temporary restriction on the development of its own water resources because of the inference in the Commission's report that by 1945 more dependable and informative flow records would enable the Commission to recommend a permanent settlement of the questions presented in the reference.

During the past sixteen years, the Commission has accumulated the more dependable and informative flow records contemplated in its report and has made exhaustive studies of water supply and demand in the Souris Basin, but has not reached agreement on the terms of a permanent settlement which might be recommended. It is doubtful if a mutually acceptable solution can be found, because of the apparent opinion of the United States Commissioners with respect to existing water uses in

Note * 25 January 1940 should read 15 January 1940.

North Dakota for Wild Life Refuges. Under Article II of the Boundary Waters Treaty of 1909, these uses could not be successfully maintained in the Province of Saskatchewan.

Saskatchewan has always considered that the waters in Saskatchewan belong to Saskatchewan while they are within the boundaries of the province and this view is consistent with the terms of Article II of the 1909 Treaty.

Development of the Souris River Basin in Saskatchewan makes it necessary that this Province have the unrestricted use of the water flowing within its boundaries, which the interim measures referred to now prohibit. In an endeavour to facilitate a fair and just settlement of the matter under reference the Province of Saskatchewan has made the following offer to the Commission; that it was prepared to pass 50% of the natural flow of the Souris River where it crosses the international boundary at Sherwood Crossing to take care of the requirements of the State of North Dakota, provided the State of North Dakota would, for its part, pass sufficient water to Manitoba to take care of that Province's requirements.

Unfortunately, Saskatchewan's offer has not been accepted and no progress whatsoever appears to have been made towards a permanent solution. A reference to the Commission should not be used to defeat the rights of Saskatchewan under the Treaty of 1909. Saskatchewan has been very patient and has made a most generous offer to facilitate a settlement. The Saskatchewan Government is prepared to stand by that offer, but is unwilling to delay further the development of its own natural resources in the Souris basin.

Accordingly, the Government of Saskatchewan considers itself no longer inhibited by the restrictions contained in the interim measures recommended by the Commission. The Government of Saskatchewan is reluctant to take this stand but the continued delay in settling this matter, with the resultant retarded development within the Souris River Watershed in Saskatchewan, leaves it no alternative. However, the Government of Saskatchewan intends to permit the continued passage for the present of 50 percent of the natural flow at Sherwood Crossing, in order to allow a further opportunity for the International Joint Commission to agree upon a recommendation for a permanent settlement.

It is respectfully requested that the contents of this letter be brought to the attention of the International Joint Commission.

The support of the Government of Canada in this matter will be appreciated.

Yours faithfully,

(signed) I.C. Nollet
Minister of Agriculture.