

**Text, History and Geography of the 1909
Boundary Waters Treaty and the 1921 Order
of the International Joint Commission**

A supplement to *Sharing the Waters*

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Alberta

THE BOUNDARY WATERS TREATY

Canada and the United States signed the Boundary Waters Treaty in 1909 to provide the principles and mechanism for preventing and resolving disputes concerning water quantity and quality along the entire border. Article VI dealt specifically with the St. Mary and Milk Rivers 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 purpose 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 $\frac{3}{4}$ 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 $\frac{3}{4}$ 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.

THE POSITIONS 90 YEARS AGO

Neither country could agree on how the Treaty was to be interpreted and implemented, specifically, how the waters were to be measured or apportioned. Canada's position was that prior allocations should be subtracted from the total flow of the two rivers prior to their equal sharing, and river flow calculations should be based on the flow at the rivers' mouths.

The U.S. position was that prior allocations should be counted as part of each country's share of the total flow, with calculations based on total flow at the crossing of the international boundary.

SUMMARY OF THE RULES OF THE 1921 ORDER

The IJC held hearings across Canada and the U.S. from 1915 to 1921 to gather information to resolve these differences, and in 1921 issued an order with rules clarifying how the measurement and apportionment was to take place. Essentially agreeing with Canada's position, the IJC said that prior allocations could be excluded from being shared equally. Measurement should take place at the border, agreeing with the U.S. position. The 1921 rules can be summarized as follows:

1. *St. Mary River:*
 - a. During the April 1 to October 31 Irrigation Season when the natural flow for the St. Mary River at the International Boundary is 666 cubic feet per second (cfs) or less, Canada is entitled to 75% of the flow of the St. Mary River and the U.S. to 25%.
 - b. During the April 1 to October 31 Irrigation Season when the natural flow for the St. Mary River at the International Boundary is more than 666 cfs, Canada is entitled to a prior appropriation of 500 cfs, and any excess over 666 cfs shall be divided equally between Canada and the U.S.
 - c. During the non-irrigation season the natural flow of the St. Mary River at the International Boundary shall be divided equally between Canada and the U.S.
2. *Milk River:*
 - a. During the April 1 to October 31 Irrigation Season when the natural flow for the Milk River at the Eastern crossing of the International Boundary is 666 cfs or less The U.S. is entitled to 75% of the flow of the Milk River and Canada to 25%.
 - b. During the April 1 to October 31 Irrigation Season when the natural flow for the Milk River at the Eastern Crossing of the International Boundary is more than 666 cfs, the U.S is entitled to a prior appropriation of 500 cfs, and any excess over 666 cfs shall be divided equally between Canada and the U.S.
 - c. During the non-irrigation season the natural flow of the Milk River at the Eastern Crossing of the International Boundary shall be divided equally between Canada and the U.S.
3. *Eastern Tributaries of the Milk River (Lodge Cr., Battle Cr., and Frenchman River):*
 - a. The natural flow of the eastern tributaries of the Milk River at the points where they cross the International Boundary shall be divided equally between Canada and the U.S.
4. *Waters not naturally crossing the boundary:*
 - a. Each country shall be apportioned such waters of the St. Mary and Milk Rivers and of any tributaries that rise in that country but do not flow across the International Boundary.

THE GEOGRAPHY OF THE RIVERS

The St. Mary River originates in the high mountain and snowpack areas of western Montana which generate relatively large quantities of water, and flows north-east into Alberta. In Alberta, most of the area draining into the St. Mary is relatively arid and contributes little additional water to the river's total flow.

By comparison, the Milk River originates in the foothills of western Montana and relies primarily on spring and summer rains to generate much of its runoff. The river flows northeast and enters Alberta near Del Bonita, then swings due east across a very arid portion of southern Alberta before reentering eastern Montana.

As a result, in most years the Milk River at the Eastern Crossing of the International Boundary reaches its maximum flow in April-May and then drops off quite rapidly, often approaching zero by late July. Once it re-enters Montana the Milk River is joined by the eastern tributaries, which originate in the Cypress Hills of southeastern Alberta and southwestern Saskatchewan, and a number of large tributaries that drain the Bear Paw Mountains and the Little Rockies in eastern Montana. Due to the significant amounts of runoff contributed by these streams, the Milk River at its confluence with the Missouri River has a greater - and possibly even larger - flow than the St. Mary River has at its mouth.

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More information, including the text of the Boundary Waters Treaty, the 1921 Order and other background documents, is available on the IJC's website at: www.ijc.org

