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The Boundary Water Treaty After 100 Years: Examining the Montana – Alberta Dispute

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Introduction

April 2003, Montana Governor Marz claimed that Montana residents were not receiving their fair share of the boundary waters that flowed across the Montana – Alberta border.

Boundary Waters Treaty signed in 1909 deals with the division of the Milk and St. Mary Rivers, both of which rise in Montana and then flow into Alberta.

Purpose is to assess the usefulness of the century-old treaty in resolving the current dispute.

International Joint Commission

Main purpose is to prevent and resolve disputes by proposing compromises that protect present water users and future generations from loss of their water entitlements .

Comprised of six members, with equal representation from both countries.

Article VI and 1921 Order

Specifies that Alberta would receive an allocation of 75% of the first 666 cfs in the St. Mary River from April 1 to October 31 and Montana would receive the same percentage allocation over the same time period from the Milk River .

All flows above 666 cfs and outside the irrigation season are to be divided equally.

Basis for the Dispute

Alberta has obtained and used more of its allotted water from the two rivers than has Montana .

A 283 km long main canal from the St. Mary River now directs water to four separate irrigation districts in Alberta that direct water to about 215,000 hectares, 15-20 recreational areas, rural municipalities and major industries .

The area irrigated from the two rivers in Northern Montana is much smaller, only about 40,000 hectares.



Analysis of Water Entitlements and Use

Alberta received more than its entitlement from the St. Mary River because Montana, the upstream jurisdiction, was unable to divert and use its full share.

The situation was reversed in the Milk River where Montana received more than its entitlement because Alberta lacked the physical resources to utilize its share of that river between 1950 and 2002, the total entitlement as a percentage of total flow of both shared rivers was 45.5% for Montana and 54.5% for those in Alberta, which met the overall allocation given in the 1921 Order.

	St. Mary River	Milk River	Lodge Creek	Battle Creek	Frenchman River	Total
Average U.S. entitlements	268,388	77,853	12,336	12,989	32,705	404,272
Average flow received by U.S.	166,485	114,721	17,615	17,320	49,346	365,488
Entitlement as a per cent of total flow	40.97	66.38	50.00	50.00	50.00	45.50
Per cent of entitlement received	62.03	147.36	142.80	133.34	150.88	90.41
Average Can. entitlements	386,766	39,428	12,336	12,989	32,705	484,224
Average flow received by Can.	495,247	2,845	7,057	8,767	16,062	529,978
Entitlement as a per cent of total flow	59.03	33.62	50.00	50.00	50.00	54.50
Per cent of entitlement received	128.05	7.22	57.21	67.49	49.11	109.45



Conclusions

A Task Force concluded in 2006 that failure to capture and utilize water entitlements can be attributed to:

- a shortage of storage capacity in Alberta and
- lack of modern diversion systems in Montana.

The task force report did not gain the support of water users on either side of the border and were said to have upset the "... confidence of landowners, consumers, and investors..."

More than six years after Montana Governor Judy Martz filed a complaint to the IJC that Montana was not receiving its fair portion of water, no resolution has been reached – and there does not appear to be one in sight.

