



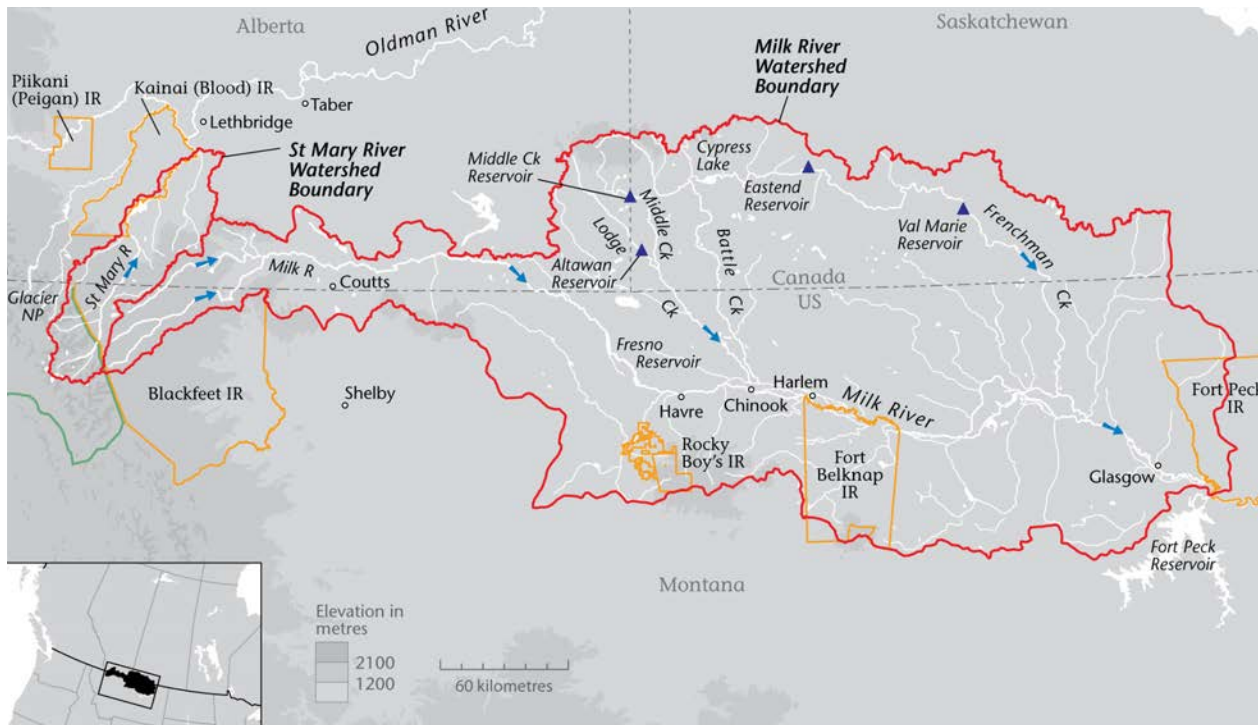
Policy Brief: Apportionment of the St. Mary and Milk Rivers



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Background and Context

The St. Mary and Milk Rivers originate in northern Montana and flow into southern parts of Alberta and Saskatchewan. Flows in the St. Mary River are five times larger and much more reliable than flows in the Milk River.



In the late 1800s, Canadian settlers began using the St. Mary River as an irrigation source; American settlers began using the Milk River. When the Milk River's unreliability threatened the stability of the region, the US made plans for a canal and dam to divert St. Mary River water into the Milk River for use in Montana. In the early 1900s, Canada became concerned that a diversion would threaten development in Canada. Alberta built a "spite canal" to show that it could siphon water diverted from the Milk River back into the St. Mary River further downstream. These issues were significant enough to warrant special provisions in the 1909 Boundary Waters Treaty authorizing the US to convey St. Mary water through the Milk River and establishing procedures for apportioning these trans-boundary streams, including stipulations that:

- The two rivers should be treated as one for the purposes of irrigation and power;
- The waters should be equally apportioned, subject to prior appropriation to Canada on the St. Mary River and the US on the Milk River;
- The International Joint Commission (IJC) should be accorded administrative jurisdiction over measurement and apportionment. The IJC's Order of 1921, still in place today, details how to allocate these waters, but questions still arise about the implementation of the Order and administrative measures adopted under the Order including questions about the balancing period, credits for surplus deliveries and Canada's right to use St. Mary waters diverted into the Milk River.

Apportionment of the St. Mary and Milk Rivers

Challenges and Opportunities

A main challenge relates to differences of opinion as to the proper interpretation of the 1921 Order on either side of the border. A perspective in the US, as expressed in Montana Governor Martz's 2003 request to review the 1921 order, is that the order failed to respect the requirements of Article VI of the BWT since it treats the two rivers separately and does not provide for equal apportionment of those waters (with Montana disadvantaged in drier years). Indeed as a matter of practice Canada has consistently received more water than the United States (55% to Canada over a 55-year period). Governor Martz also raised concerns over the absence of credit for surplus flows delivered by Montana and noted increased knowledge of Indian reserved rights.

From a Canadian perspective, Article VI of the BWT allows the US to take its share of the waters, but if the US fails or is unable to do so, then the natural flow of the St. Mary River will continue through to Canada. Alberta, therefore, is reluctant to allow the US to use Canadian storage "for free" by over-delivering and then seeking credit for that over-delivery later in the irrigation season. Additionally, Alberta seeks to ensure water supply security on the Milk River for existing irrigation and municipal uses in late summer – something currently only provided for in the administrative measures implementing the 1921 order.

Other challenges include ensuring that deteriorating infrastructure can effect the apportionment, especially with many maintenance needs competing for diminished funds; uncertainty about future flow and precipitation patterns due to climate change; and including overlooked environmental and evolving social considerations in already detailed and difficult discussions.

Recommendations

Cooperative consideration of water apportionment refinements offers opportunities for mutually advantageous outcomes for the involved jurisdictions and a means for addressing challenges. Specifically, the Water Management Initiative (WMI), established by Alberta and Montana in 2009, holds promise for each jurisdiction to better share waters under the framework provided by the BWT. The WMI is a joint initiative of local water users and government officials. The WMI provides a useful vehicle for the cooperation necessary to achieve mutual benefits, bringing the state and province to the forefront; the treaty and order provide a framework for federal and IJC involvement in issues that cannot be resolved at the more local level.

We encourage decision makers to engage in ongoing discussions regarding this issue and continue to dialogue regarding feasible solutions for all parties.

Note: This Policy Brief draws on the research presented in *Water Without Borders? Canada, the United States and Shared Waters* (University of Toronto Press), edited by Dr. E. Norman, Dr. A. Cohen, and Dr. K. Bakker. This Brief draws in part from the chapter written by Nigel Bankes and Elizabeth Bourget. It forms part of a set of Policy Briefs funded by the Walter & Duncan Gordon Foundation on 'flashpoints' in Canada-US Trans-boundary Water Governance. The full set of Policy Briefs can be found at www.watergovernance.ca.