

INTERNATIONAL JOINT COMMISSION

Reference Documents

Flathead River Reference

June, 1985

Enclosed are reference documents describing the mandate and scope of study with respect to the inquiry by the International Joint Commission concerning the Flathead River.

1. Boundary Waters Treaty
2. Reference to the International Joint Commission
3. Directive to the Flathead River International Study Board
4. Proposed Plan of Study

Additional copies are available from the respective Secretaries of the Commission at:

United States Section  
2001 S Street, NW  
2nd Floor  
Washington, D.C. 20440

Canadian Section  
100 Metcalfe Street  
18th Floor  
Ottawa, Ontario K1P 5M1

TREATY  
BETWEEN THE UNITED STATES AND GREAT BRITAIN  
RELATING TO BOUNDARY WATERS, AND QUESTIONS  
ARISING BETWEEN THE UNITED STATES AND CANADA.

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, the Right Honourable James Bryce, O.M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

PRELIMINARY ARTICLE

For the purposes of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

ARTICLE I

The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof.

## ARTICLE II

Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto.

It is understood, however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right, which it may have, to object to any interference with or diversions of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

## ARTICLE III

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbours, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

## ARTICLE IV

The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

## ARTICLE V

The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licences authorized by the Dominion of Canada and the Province of Ontario.

So long as this treaty shall remain in force, no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet of water per second.

The United Kingdom, by the Dominion of Canada, or the Province of Ontario, may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand cubic feet of water per second.

The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation.

NOTE: The third, fourth and fifth paragraphs of Article V were terminated by the Canada-United States Treaty of February 27, 1950 concerning the diversion of the Niagara River.

## ARTICLE VI

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 purposes 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 three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three-fourths 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.

## ARTICLE VII

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

## ARTICLE VIII

This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under Articles III and IV of this Treaty the approval of this Commission is required, and in passing upon such cases the Commission shall be governed by the following rules or principles which are adopted by the High Contracting Parties for this purpose:

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

- (1) Uses for domestic and sanitary purposes;
- (2) Uses for navigation, including the service of canals for the purposes of navigation;
- (3) Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

The requirement for an equal division may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal division can not be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commissioners on each side to their own Government. The High Contracting Parties shall thereupon endeavour to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced

to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

#### ARTICLE IX

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

#### ARTICLE X

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions any matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth and sixth paragraphs of Article XLV of the Hague Convention for the pacific settlement of international disputes, dated

October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

#### ARTICLE XI

A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

#### ARTICLE XII

The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the Commission.

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretaries of the Commission at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties.

The Commission shall have power to administer oaths to witnesses, and to take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceedings before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

#### ARTICLE XIII

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

#### ARTICLE XIV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange



of its ratifications. It shall remain in force for five years, dating from the day of exchange of ratifications, and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the other.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 11th day of January, in the year of our Lord one thousand nine hundred and nine.

(Signed) ELIHU ROOT [SEAL]

(Signed) JAMES BRYCE [SEAL]

AND WHEREAS the Senate of the United States by their resolution of March 3, 1909, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Treaty with the following understanding, to wit:

"Resolved further, as a part of this ratification, That the United States approves this treaty with the understanding that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's river at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's river, within its own territory, and further, that nothing in this treaty shall be construed to interfere with the drainage of wet swamp and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will, in effect, form part of the treaty;"

AND WHEREAS the said understanding has been accepted by the Government of Great Britain, and the ratifications of the two Governments of the said treaty were exchanged in the City of Washington, on the 5th day of May, one thousand nine hundred and ten;

NOW, THEREFORE, be it known that I, William Howard Taft, President of the United States of America, have caused the said treaty and the said understanding, as forming a part thereof, to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of May in the year of our Lord one thousand nine hundred and ten,  
[SEAL] and of the Independence of the United States of America the one hundred and thirty-fourth.

Wm H Taft

By the President:

P C Knox

*Secretary of State.*

## PROTOCOL OF EXCHANGE.

On proceeding to the exchange of the ratifications of the treaty signed at Washington on January 11, 1909, between the United States and Great Britain, relating to boundary waters and questions arising along the boundary between the United States and the Dominion of Canada, the undersigned plenipotentiaries, duly authorized thereto by their respective Governments, hereby declare that nothing in this treaty shall be construed as affecting, or changing, any existing territorial, or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's River, within its own territory; and further, that nothing in this treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and also that this declaration shall be deemed to have equal force and effect as the treaty itself and to form an integral part thereto.

The exchange of ratifications then took place in the usual form.

In witness whereof, they have signed the present Protocol of Exchange and have affixed their seals thereto.

DONE at Washington this 5th day of May, one thousand nine hundred and ten.

PHILANDER C KNOX [SEAL]

JAMES BRYCE [SEAL]



United States Department of State

Washington, D.C. 20520

December 19, 1984

Mr. David La Roche  
Secretary, U.S. Section  
U.S.-Canada International  
Joint Commission  
2001 S Street, N.W.  
Washington, D.C. 20440

Dear Mr. La Roche:

I have the honor to inform you that the Governments of Canada and the United States have agreed, pursuant to Article IX of the Boundary Waters Treaty of 1909, to request the International Joint Commission to examine into and report upon the water quality and quantity of the Flathead River, relating to the transboundary water quality and quantity implications of the proposed coal mine development on Cabin Creek in British Columbia near its confluence with the Flathead River, and to make recommendations which would assist Governments in ensuring that the provisions of Article IV of the said treaty are honored.

For the information of the Commission, the Governments further note that on February 21, 1984 the Government of British Columbia announced that approval-in-principle had been granted to Sage Creek Limited for the proposed coal mine, thereby allowing the company to proceed with securing licenses, permits and final approvals under the provincial coal development review process. In granting this approval, the British Columbia Government acknowledged that the approval-in-principle is subject to action taken by federal authorities pursuant to their international obligations under the Boundary Waters Treaty.

In light of the above, the Governments request that the Commission examine into and report upon the following matters regarding the Flathead River basin:

- 1) the present state of water quality and quantity at the border (including fluctuations) and the current water uses (including water dependent uses such as recreation) in the Flathead River basin;
- 2) the nature, location and significance of fisheries currently dependent on the waters of the Flathead River and its tributaries, Howell and Cabin Creek;
- 3) the effects on present water quality and quantity at the border and consequent effects on current water uses (including water dependent uses such as recreation) which would result from the construction, operation and post-mine reclamation of the proposed Cabin Creek coal mine; and

4) such other matters as the Commission may deem appropriate and relevant to water quality and quantity at the border (including downstream effects in the United States) as occasioned by the proposed Cabin Creek coal mine.

In the conduct of its investigation and the preparation of its report, the Commission shall make full use of information and technical data heretofore available or which may become available in either country during the course of its investigations. In addition, the Commission shall utilize the services of specially qualified persons and other resources in Canada and the United States. The Commission shall develop, as early as practicable, a work program under this reference for the information of Governments.

The Governments request that the Commission proceed with the activities under this reference as expeditiously as practicable and report to Governments no later than 18 months from this date. The Commission should issue interim reports as appropriate.

An identical letter is being sent to the Secretary of the Canadian Section, from the Department of External Affairs.

Sincerely,

A handwritten signature in dark ink, appearing to read "James M. Medas". The signature is fluid and cursive, with the first name "James" being the most prominent part.

James M. Medas  
Deputy Assistant Secretary of State  
for Canada

DIRECTIVE TO THE  
FLATHEAD RIVER INTERNATIONAL STUDY BOARD  
(April 18, 1985)

Whereas the Governments of the United States and Canada have forwarded the attached Reference, dated December 19, 1984 and February 15, 1985, respectively, to the Commission for examination and report pursuant to Article IX of the Boundary Waters Treaty of 1909:

Whereas the Commission, in its decision of April 18, 1985, established the Flathead River International Study Board to undertake, through appropriate governmental or other agencies in the United States and Canada, the investigations and studies set out below.

The Commission directs that:

1. The Board shall examine into and report to the Commission upon the following:
  - (a) The present state of water quality and water quantity of the Flathead River at the border (including fluctuations);
  - (b) current water uses (including water dependent uses such as recreation) in the Flathead River basin together with their effects on present water quality and quantity;
  - (c) the nature, location and significance of fisheries currently dependent on the waters of the Flathead River and its tributaries, Howell and Cabin Creek;
  - (d) effects on the present state of water quality and water quantity of the Flathead River at the border which would result from the construction, operation and post-mine reclamation of the proposed Cabin Creek coal mine;

- (e) effects on current water uses (including water dependent uses such as recreation) which would result from effects on the present state of

- (i) water quality, and

- (ii) water quantity

which have been identified under paragraph (d); and

- (f) effects which the construction, operation and post-mine reclamation of the proposed Cabin Creek coal mine would have on the habitat for fisheries in Canada in the waters of the Flathead River and its tributaries Howell and Cabin Creek, and consequent effects on fisheries in the United States.

2. In carrying out its examinations the Board shall take into account and provide an assessment of all factors necessary and relevant to the determinations and predictions required pursuant to section 1.

3. The Board shall as soon as possible prepare and submit for Commission approval a Plan of Study for the investigations that it proposes to undertake as well as a schedule of the estimated time and costs required. The Board shall submit its report on the issues in paragraph 1 to the Commission before May 15, 1986. The Board shall also submit interim reports to the Commission regarding any effects identified under paragraph (e) above as soon as it identifies those effects.

4. The Board shall, to the extent possible, identify in its Plan of Study the committee and working groups which it will require to implement this Directive.

5. The Board shall carry out the Plan of Study approved by the Commission. If, at any time, it appears to the Board that the Plan of Study should be modified, it shall advise the Commission accordingly and request instructions from the Commission.

6. The Commission may amend existing instructions or issue new instructions to the Board at any time.

7. In the conduct of its investigations and in the preparation of its report or reports, the Board should use of information and technical data heretofore available, or which may become available during the course of the investigations.

8. Members of the Board, and of its committees and working groups, whether or not employed by departments or agencies of government, are not representatives of their employers. They serve in a personal and professional capacity under the direction of the Commission. The Commission will not consider that their employers or superier officers are committed in any way by the actions of individual members or of the Board.

9. In carrying out its functions under this Directive, the Board will act as a unitary body, through joint, integrated and co-ordinated efforts.

10. Each Chairman shall ensure that the other members of his Section of the Board are informed of all instructions, inquiries and authorizations received from the Commission, as well as of activities undertaken by or on behalf of the Board, progress made and any developments affecting such progress.

11. A Chairman, after consulting the other members of his Section of the Board, may appoint a Secretary of that Section. Under the general supervision of the Chairman, the Secretary shall carry out such duties as are assigned to him by the Section.

12. Members of the Board and of Committees and working groups will normally make their own arrangements for reimbursement of necessary expenditures for travel.

13. The Chairmen shall keep the Commission currently informed of the Board's plans and progress and of any developments, actual or anticipated, which are likely to impede, delay or otherwise affect the carrying out of the Board's responsibilities. To this end, the Board shall submit progress reports to the Commission on October 1, 1985 and February 1, 1986 describing the progress that has been made and any problems that have arisen in the investigation. The Board shall also submit reports at such other times as the Commission may request or the Board may consider necessary. All such reports shall be sent to the Secretaries and to each member of the Commission. In addition, the Board shall ensure that members of the Commission staff who are designated as liaison officers are kept fully informed of the Board's work on an on-going basis.

14. If, in the opinion of the Board there is a lack of clarity or precision in any instruction, directive or authorization received from the Commission, the matter shall be referred promptly to the Commission for appropriate action.

15. Documents, letters, memoranda and communications of every kind in the official records of the Commission are privileged and become available for public information only after release by the Commission. The Commission considers all documents in the official records of the Board or of any of its committees to be similarly privileged. Accordingly, all such



documents shall be so identified and maintained in separate files. They shall become available for public information only after Commission approval.

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David A. LaRoche  
Secretary  
United States Section

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David G. Chance  
Secretary  
Canadian Section

June 5, 1985

FLATHEAD RIVER INTERNATIONAL STUDY BOARD  
PLAN OF STUDY

1.0 INTRODUCTION

1.1 Authority

The Governments of the United States and Canada forwarded a reference to the International Joint Commission (IJC) on December 19, 1984 and February 15, 1985 respectively, requesting the Commission, pursuant to Article IX of the Boundary Waters Treaty of 1909, "to examine into and report upon the water quality and quantity of the Flathead River, relating to the transboundary water quality and quantity implications of the proposed coal mine development on Cabin Creek in British Columbia near its confluence with the Flathead River, and to make recommendations which would assist governments in ensuring that the provisions of Article IV of the said Treaty are honoured."

On April 18, 1985, the Commission, in turn, established a Flathead River International Study Board to undertake, through appropriate agencies and individuals in the United States and Canada, the investigations requested by the Commission. An outline of the investigations to be undertaken by the Board is included in the Directive which is attached as Appendix 1.

1.2 Purpose of the Plan of Study

In its directive to the Board, the Commission requested that, as soon as possible, the Board prepare a Plan of Study for the investigations that it plans to undertake as well as a schedule of the estimated time and costs.

Revisions to the Plan of Study may have to be made to accommodate new issues and to adjust to changes arising during the course of the investigations.

Cost schedules will be forwarded to the Commission once a committee structure has been approved, the committee members have been named, the committees have met to discuss the details of their investigations and their individual costs, and the Board has approved the Committee proposals.

### 1.3 The Study Area

On the basis of the Directive from the International Joint Commission and a preliminary assessment of the maximum likely extent of downstream effects of a coal mine at Cabin Creek, British Columbia, the Board has defined the study area as the Flathead River Basin upstream from the outlet of Flathead Lake, including the uppermost potential influence of the Sage Creek Coal Company's Cabin Creek coal mine and its ancillary facilities. The Board recognizes that the Hungry Horse Dam and its reservoir have had some impact on the South Fork of the Flathead River and its uses. However, for purpose of water quality and flows of the South Fork of the Flathead River the Board accepts the discharge from the dam as the upper limit of the study area on this tributary.

### 1.4 Data Bases

The baseline data now available or being collected will be expected to serve the needs of the Board and committees. The Board does not expect to initiate any studies to generate new data unless it is clearly demonstrated that

new data are required to close data gaps, or to provide sufficient information to address matters identified in the Directive to the Board.

## 2.0 STUDY PLAN

### 2.1 Organization

A six member Board, including three members from Canada and three from the United States, has been named to manage the study. The members are:

#### Canada

Mr. E.M. Clark, Chairman,  
Inland Waters Directorate,  
Environment Canada

Dr. J. O'Riordan,  
Assessment and Planning Branch  
B.C. Ministry of Environment

Dr. P. McCart,  
P. McCart Biological Consultants Ltd.

#### United States

Mr. J.A. Posewitz, Chairman,  
Department of Fish, Wildlife, and Parks,  
State of Montana

Dr. A.A. Horpestad,  
Department of Health and Environmental Sciences,  
State of Montana

Mr. D. Kimball,  
National Park Service,  
U.S. Department of the Interior

### 2.2 Technical Committees

The Board requires additional expertise to ensure that the study is completed in a timely and professional manner, and will establish technical committees to assist it. The Board has provisionally identified four committees:

1. the Mine Development Committee;
2. the Water Quality and Quantity Committee;
3. the Water Uses Committee; and,
4. the Biological Resources Committee.

The areas of responsibility of each of the committees are outlined in the Committee Task Descriptions, Section 2.5.

### 2.3 Board and Committee Responsibilities

Through its chairmen the Board will submit periodic reports to the Commission on the progress of the study. If particular problems arise with scheduling, meeting target deadlines, availability and quality of information, or funding, they will be brought to the Board's attention. The Board will judge whether the problem should be brought to the attention of the Commission. The Board may also authorize the development of special reports should they be warranted. Further as the Board identifies any effects on current water uses it will report to the Commission.

The chairmen of each section of the Board, after consultation with other members of his section, have appointed secretaries for their sections. Under the general supervision of the chairmen, these individuals shall carry out such duties as are assigned by that section. Board secretaries will be kept informed of Board and committee communications, and shall be responsible, on behalf of the Board, for collating output from all committees and for facilitating intercommittee coordination, cooperation, and communication.

Secretaries to the Board are:

Canada

Chris Pharo

Environment Canada

United States

Neil Harrington

Montana Department of State Lands

Under the guidance of the Board, each committee shall be responsible for: its program organization and implementation; establishing its own working structure; producing a detailed work plan; reviewing its tasks; establishing its own input and output schedules; keeping the Board informed of progress and interim findings; and compiling draft interim and final reports by target dates to be set by the Board. The committee work plans are subject to Board approval.

Work of the committees will be co-ordinated through workshops attended by Board and committee members.

Work of committees other than the Mine Development Committee will be accomplished in two phases: the first, which will result in an initial report with information presented at a workshop considering the current situation of water quality, quantity, biological resources, and water uses; second workshop, relying heavily on the information provided from the Mine Development Committee, will consider the potential impacts on the water quality, quantity, biological resources, and uses, in the study area downstream of the International Border.

Because the contribution from the Mine Development Committee is fundamental to the extension of the studies by all other committees to include the impact of the mine on the water quality, quantity, and aquatic biological resources, its work must be initiated quickly. It is anticipated that this committee's work will be largely completed with the presentation at its first workshop, and the role of its members will become that of consultants or advisors to other committees as needed.

The Board, working with the committee co-chairmen, will synthesize and integrate the individual committee final reports into a document that will become the Board's report to the Commission. The mechanism by which the final Board report will be produced has still to be decided. The Board's target is to forward their final report to the Commission by May 15, 1986. Presentation and discussion of the report shall then be at the discretion of the Commission.

2.4 Committee Member Accountability

Committee members, whether or not employed by departments or agencies of governments, are not representatives of their employers. They serve in a personal and professional capacity under the direction of the Commission.

2.5 Communication

Because of the complexity of the problems being assessed, there must be a free interchange of information among the disciplines represented within committees as well as among the committees and the Board.

The Board will try to facilitate this interchange in the following ways:

1. the Board intends that at least one Board member will be associated with each of the committees in a liaison capacity;
2. Board secretaries will be responsible for the timely transmission of information among committees and the Board;
3. when necessary, either the Board or committee co-chairmen can solicit technical advice from individuals outside the committee structure. Advisors may come from federal, state, and provincial agencies, universities, research institutes, or other sources of qualified expertise. Committee chairmen shall notify the Board of the selection of technical advisors. Any costs involved must have prior Board approval; and,

4. The Board will organize workshops as necessary to be attended by Board members and committee co-chairmen, and committee members and advisors if required. The purposes of the workshops will be to:
  - a. review the progress of each of the committees;
  - b. clarify the findings of each of the committees;
  - c. resolve conflicts between the findings of committees;
  - d. make known any data or information requirements that one committee may have of another;
  - e. identify other data needs, if any, required to complete the study.

## 2.6 Committee Task Descriptions

### A. Mine Development Committee

The Mine Development Committee will have the following tasks:

1. to establish detailed work plans, including estimated financial requirements, schedules, subcommittee assignments, etc.;
2. to examine the mine and its ancillary facilities as described in the Sage Creek Coal Stage II Report as well as the supplementary conditions attached to the Stage II Approval-in-principal required by the Government of British Columbia;
3. to determine the source, magnitude, extent, and duration of all water discharges related to the mine, and stream channel modifications occurring during the construction, operation, and reclamation of the Cabin Creek Coal Mine and its ancillary facilities, that could affect water quality, quantity or stream habitat of the Flathead River



or its tributaries (especially Cabin and Howell Creeks). In its determinations, the committee shall consider, but not be limited to, plans for:

- construction of powerlines and roads,
  - mine site water management,
  - construction camps,
  - sewage treatment
  - blasting procedures,
  - mine waste disposal,
  - coal handling and dust suppression,
  - reclamation; and,
4. to prepare a report detailing the results of the above tasks, to be used by both the other committees and the Board.

It would be highly desirable to have a representative of the mining company involved in the study. The Board has approved a recommendation that the company be asked to provide a representative to serve on the Mine Development Committee.

B. Water Quality and Quantity Committee

This committee will have the following tasks:

1. to prepare detailed work plans, including estimates of financial requirements, schedules, subcommittee assignments, etc.;
2. to describe existing water quality and quantity at the international border. This will involve:

- a compilation of Canadian and United States data for stations at the border,
  - an evaluation of the comparability of the two sets of data,
  - a synthesis of the two sets of data in an appropriate format.
- 
3. to describe existing water quality and quantity within the study area downstream of the international border;
  4. to assess, using appropriate models, any changes in water quality and quantity which might occur within the study area, at and downstream of the border, as the result of the development of a coal mine at Cabin Creek; and,
  5. to make their results known to the Board in a series of interim and final reports in time for the Board to produce its submissions to the Commission.
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- C. Water Uses Committee
- The Water Uses Committee has the following tasks:
1. to prepare detailed work plans, including estimated financial requirements, schedules, subcommittee assignments, etc.;
  2. to describe existing water uses and development activities, consumptive and nonconsumptive, in the study area;
  3. to identify the nature, location, and significance of fisheries in the study area;
  4. to determine how the existing water uses, development activities and other relevant factors have affected water quality and water quantity in the study area;
  5. to determine whether water uses or development activities which have been either licenced or permitted, but are not yet in effect, could affect water quality and quantity;

6. to predict how changes in water quality and quantity associated with the mine at Cabin Creek would affect water uses, either existing or licensed or permitted, downstream of the international border; and,
7. to present their results to the Board in a series of interim and final reports in time for the Board to meet its target dates for its submissions to the Commission.

D. Biological Resources Committee

This committee will have the following tasks:

1. to prepare detailed work plans, including estimates of financial requirements, schedules, subcommittee assignments, etc.;
2. to characterize the aquatic biological resources (algae, invertebrates, and fish) of the study area;
3. to describe the life histories, including distributions and movements, of fish populations of significance to fisheries, especially those which utilize Cabin and Howell Creeks and the North Fork of the Flathead River;
4. to characterize the in-stream flow and water quality requirements at key locations (e.g. Cabin and Howell Creeks and the North Fork of the Flathead River) of fish populations of significance to fisheries in the study area;
5. to predict how changes in the water quality and quantity associated with the development of a coal mine at Cabin Creek might affect the biological resources, especially fish, of the study area; and,
6. to present their results to the Board in a series of interim and final reports in time for the Board to meet its target dates for its submissions to the Commission.

### 3.0 FUNDING

Because the technical committees have not yet been established, full extent of costs are not yet known. They will be determined when the committees have developed their work plans. However it is expected that staff time and salaries for people working for federal, state, and provincial government agencies will be contributed by those agencies.

### 4.0 TIME CONSTRAINTS AND SCHEDULE

In accordance with the orders of the Commission as set out in the "Directive to the Flathead River International Study Board" the Board is directed to submit its final report to the Commission no later than May 15, 1986. The Board is also required to submit progress reports to the Commission on October 1, 1985, and February 1, 1986, at which times both progress and any developments, actual or anticipated, which are likely to impede, delay, or otherwise affect the discharge of the Board's responsibilities, will be reported.

A table showing Board and technical committee activities and target dates is attached as Appendix 2.