

Before the 1970s, the development of water management strategies, and irrigation development in particular, were perceived as a local issue of economic development. Putting water to “use” for the agricultural community rather than having it “wasted” as it traveled downstream was widely accepted as the best means to support economic development in the arid regions of the southern prairies. By the 1970s, however, this assumption was increasingly challenged. With a growing awareness of the inherent value and fragility of natural ecosystems, governments – particularly at the federal level – began to weigh the economic benefits of large-scale water diversion projects against their potential harm through formal environmental assessments.

In 1973, the federal government established its first “environmental assessment and review process” (EARP). These guidelines served as the basis for Ottawa’s responsibility to assess the environmental consequences of development projects until the mid-1990s although the federal government did not always apply its own guidelines. This was found to be the case for the Oldman Dam project, and the Friends of the Oldman River (FOR), an environmental advocacy group, were forced to go through the courts to get the federal government to conduct an environmental review. Only in May 1992, after the Oldman Dam was completed, did a court-ordered EARP examination of the project recommend that the structure be decommissioned. This report stated that “the environmental, social and economic costs of the project” outbalanced the economic benefits.”¹ Environmental advocates including FOR have been challenging aspects of the project ever since.²

While the EARP guidelines have been superseded by the passage of the *Canadian Environmental Assessment Act* (CEAA) in 1995, most of the environmental challenges to the continued operation of the dam have stemmed from the 1992 EARP recommendations (see appendix) and the federal government’s alleged failure to abide by its own recommendations as set out in the EARP report.

Beyond the salient environmental issues, Aboriginal rights have played a longstanding and central role in this conflict. The Peigan First Nation (PFN) reserve, near Brocket, Alberta, straddles the Oldman River downstream from the dam. Initially, the PFN’s leadership was in favour of its construction. Since the selection of the dam site, the PFN

¹ Cliff Wallis, “Keeping the Oldman Rolling Along: The Courts as a Tool for Riparian Habitat Preservation.” *Environment Network News* (May-June 1993), 19.

² Two avenues continue to be pursued by FOR in their opposition to the Oldman project. They have submitted a number of Environmental Petitions to the Environmental Commissioner of the Federal Auditor General’s office to force the federal government to abide by the recommendations of the 1992 environmental assessment. FOR’s has petitioned the Auditor General as recently as June 2004 in regard to the impact of the dam on fish habitat (see <http://www.oag-bvg.gc.ca/domino/petitions.nsf/viewe>) Another means used by FOR in their opposition to the dam has been the Joint Public Advisory Committee of the Commission on Environmental Cooperation (CEC), a mechanism of the North American Free Trade Agreement (NAFTA). In their submissions to the CEC, FOR has contended that the Government of Canada “is failing to enforce and comply with the *Fisheries Act* and the *Canadian Environmental Assessment Act* (CEAA).” (see <http://www.cec.org>)

has challenged the legitimacy of the project on the basis that the development has adversely affected water flows on the reserve. A protest by the Peigan in the form of a blockade in the late 1970s over the band's surrender of reserve land for an irrigation canal in the early 1920s was critical to the provincial government's choice of a site (Three Rivers) off reserve land.

Initially, the Peigan leadership was not opposed to damming the river as long as the dam was constructed at Brocket, on reserve lands, and proposed co-management of the project with the Alberta government. To avoid this, the provincial government built the dam outside of Peigan territory at Three Rivers, and instead promised to work out an economic development package with the band. When the province subsequently failed to act on this promise, elements within the PFN formed a group known as the Lonefighters who then agitated for redress by the province. In September 1990, a confrontation between the RCMP and the Lonefighters convinced the PFN council to change its position and unite with the Lonefighters and other band members in opposition to the dam.

In 2001, after years of negotiation, confrontation and threats of litigation by band members, the governments of Alberta and Canada reached an agreement on compensation with the PFN in 2001. The band was paid \$64.3 million with an annual payment of \$500,000 for the use of Peigan land.³ Each of the band's 2600 members received payment of \$1000.

Peigan opposition to the project was not monolithic. Some band members saw the construction of the dam as an infringement of the PFN's inherent right to protect and govern their own land and resources. Still others, including key PFN political leaders, were angry at the failure of the Alberta government to include them as full economic partners in the project. Finally, some band members opposed the dam on spiritual grounds because it threatened territory held to be sacred. This last group shared some common ground with non-PFN environmental advocates although the two groups did not act together.

The imperative of resource development, in this case to supply the irrigation needs of the agricultural economy of southern Alberta, environmental protection and Aboriginal rights is further complicated in the Oldman case owing to the constitutional separation of powers between the federal and provincial governments. The Government of Alberta was the proponent of the project as well as the owner and operator of the dam. The federal government's responsibilities under the *Fisheries Act* and the *Navigable Waters Protection Act*, in addition to its fiduciary duties under *the Indian Act*, presumably required it to act in the best interest of both the Peigan and the environment. However, the constitutional negotiations over Meech Lake and Charlottetown – highly influenced the federal government's actions, or lack thereof, at the time. Given the federal cabinet's desire to bring Quebec within the constitutional fold, Ottawa felt it could not afford to alienate Alberta despite the court rulings and injunctions prohibiting the Oldman River

³ "Peigan to vote on \$64-million deal: Compensation offered after building Oldman River Dam." *Calgary Herald*, October 5, 2001, p.4

dam's completion and in the face of the vocal opposition from both aboriginal and environmental communities.

The following chronology is divided into three sections. The first provides a historical background of water management in southern Alberta to the 1970s. The second traces the issues surrounding the separate but occasionally parallel opposition to the dam undertaken by environmental advocates and members of the PFN during the planning and construction phases of the dam project. The third chronicles the conflicts which have arisen since the dam's construction. The ongoing opposition to the project, particularly by members of FOR in quasi-judicial forums such as the Commission on Environmental Cooperation under the North American Free Trade Agreement (NAFTA) as well as numerous petitions to the Environmental Commissioner of the Office of the Auditor General of Canada's Office, all reflect the fact that the Oldman River dam conflict has not yet been resolved despite the compensation agreement with the PFN.

CHRONOLOGY: OLDMAN RIVER DAM CONFLICT

Compiled by James Daschuk

Part I: Historical Background to Water Management in Southern Alberta

1877-Treaty 7 was signed between the Blackfoot people, including the Peigan, and the Crown. The Blackfoot surrendered all of their land including the entire Oldman watershed to the Crown. In return, they were allowed to hunt throughout the area and reserved a block of land for their reserve. There was no consideration of water rights at the time of the Treaty signing.

1890- The Canadian government first recognized that drought was seriously impeding the settlement of southern Alberta; “It was not until 1890 when the problems of the drought [1885-1896] became acute and the possibility of the settlers fleeing their dry lands en masse (emphasis Mitchner’s) became a distinct possibility that the government at long last officially recognized that such a problem did in fact exist.” (Mitchner 1973:2)

1893-A British-based coal company joined with a group of Mormon settlers to form the first of a series of companies that financed and operated water diversions from the St. Mary River to attract more settlers to southern Alberta. (Glenn 1999:19)

1893- The Territorial Legislative Assembly established an Irrigation Committee that recommended the Dominion government investigate the possibilities of irrigation in the west. (Mitchner 1973:47)

1894, July-The federal Department of Interior drafted the *North-West Irrigation Act* (Mitchner 1973, 66). It became the model for Alberta’s water management legislation, it “gave ownership and all rights to surface water in the Territories, and the authority to allocate the use of that water to the federal Crown.” (Glenn 1999:20)

1898- The *Dominion Lands Act* was amended to made land to be developed for irrigation available at 1/5th the going market price. It was patterned after similar legislation in the United States. The irrigation system “sparked much apparent interest in irrigation, but was abused by speculators more interested in acquiring the land than growing anything on it.” (Glenn 1999:20)

1910-Irrigation from the Oldman River to land north of Fort Macleod was discussed in federal government reports.

1912-The Canadian Pacific Railway (CPR) developed two large tracts of irrigated land between Medicine Hat and Calgary and purchased control of the Alberta Railway and Irrigation Company. In the early 20th century, the CPR and the Canadian government worked closely together to attract immigrants. It was an integral part of the National Policy and was maintained in different forms over time. (Glenn 1999:20)

1913-The Federal Department of the Interior completed surveys and a feasibility study for the Lethbridge North Irrigation (LNI) Project (*note-As a proponent of increased irrigation, the LNI District-would become a key participant in the dispute over the dam in the 1980s and 1990s) (Glenn 1999:23)

Pre-WW1-The Western Canada Irrigation Congress was formed. It included politicians, railway officials, land developers & government engineers. Its activity peaked immediately before and after World War 1. Its executive was comprised of cabinet-level politicians & senior government officials and the four western provinces along with representatives from the railway and land development companies. Although no direct funding by governments, “their generous assistance in kind laid the foundation for the public subsidization of irrigation that has continued to the present day.” (Glenn 1999:21)

1915-Construction began on the Bassano dam on the lower Bow River near Brooks, Alberta. At the time it was considered one of the largest dams in the world. Part of the project included the Brooks Aqueduct, a massive elevated structure that carried water across a two mile-wide valley. The dam provided water for irrigation for the Eastern and the Bow River Irrigation Districts. (Bow River Basin Council website)

1919-The Lethbridge North Irrigation District (LNID) was established by the farmers in the region. Under the terms of the new Alberta *Irrigation Districts Act*, the federal Department of the Interior approved allocation of irrigation water from the Oldman River. (Glenn 1999:23)

1922-The LNID bought a 205 acre right of way through the Peigan reserve and the federal government began construction of the works to divert Oldman water for irrigation. (Glenn 1999:23) (*note-The Peigan say this transpired without their consent & contravened provisions of the Indian Act. This became the basis of conflict and Peigan demands for compensation in the late 1970s.)

1923, May –The construction of a diversion weir, a canal, and a flume across the Oldman River was completed. The irrigation works were destroyed by flooding later the same year. The LNID borrowed money from the province to rebuild the works and began to operate the irrigation system in 1924. Because the original works were constructed on a burial ground, the construction began an ongoing conflict between the Peigan and the LNID. The provincial loan to reconstruct the LNID irrigation works began “the never-ending flow of cash out of Edmonton to subsidize irrigation in the Oldman River Basin.” The farmers of the LNID were unwilling or unable to repay the province for the reconstruction loan. In 1926, the Alberta government absorbed the debt and placed the district under the control of a trustee. This arrangement continued until 1968, when the district reverted back to the control of a board of directors elected by the ratepayers. (Glenn 1999:23)

1930s-The provinces were all but bankrupt and provincial water management services were without money or staff to work at water development. The CPR, whose lands were largely settled and whose revenues were dropping, got out of the irrigation business and

sold the aging and deteriorating works to farmers or the Alberta government “at bargain basement prices” (Glenn 1999:21) (*note-The Province of Alberta formally defaulted in April 1936.)

1935-The federal government passed the *Prairie Farm Rehabilitation Act* (PFRA). The act established an advisory committee as to “the best methods to be adopted to secure rehabilitation of the drought and soil drifting areas in the provinces of Manitoba, Saskatchewan and Alberta.” (Glenn 1999:21)

1935-1945- The PFRA focused on to the preservation of topsoil. Its water strategies limited to the construction of farm ponds and dugouts to catch and store water for watering stock & the domestic needs of families. During World War 2, the actions of the PFRA were severely curtailed, though “shelf projects” were designed during the war. After 1945, many of them became public works projects. (Glenn 1999:22)

1945-1960s- With expanding economic conditions, irrigation and hydroelectric development proposals in the three prairie provinces posed the potential for conflict over the use and management of the river systems. With the return of veterans and displaced farmers driven from marginal lands during the 1930s, the Federal government saw irrigation development as one way to get men back to work. The PFRA was ready and willing to lead the way. Some PFRA projects undertaken in the SSRB included the St. Mary River Project (late 1940s); the Bow River Project (1950s); and the Gardiner Dam, which was begun in 1958 and completed in the 1960s. By the early 1960s, the federal government (as did the CPR 30 years earlier) realized that irrigation was a money losing proposition. Federal interest shifted from agriculture (especially irrigation) and big water projects to the industrial and service sectors, “and PFRA faded from the water scene.” (Glenn 1999:22)

1948-The three prairie provinces and the federal government established the Prairie Provinces Water Board (PPWB) to recommend the best use of water in the Saskatchewan River system and to decide on water allocation to each province. Although it began in a spirit of cooperation, it soon broke down under conflicting provincial interests. A formula for sharing the flow of water between provinces, the “Master Agreement on Apportionment” was formalized in 1969. (*note- Essentially, Saskatchewan and Alberta were allocated 50% of the flow of the South Saskatchewan River. Any residual flow was to pass through to the downstream province. Manitoba’s water use is not constrained by the agreement.) (Glenn 1999:14).

1950-Irrigation land districts in southern Alberta peaked at 32,000 hectares. By the late 1960s, the amount of irrigated land fell to less than 20,000 hectares. (Glenn 1999:23)

1950s-The PFRA advisory committee grew into a “full-blown bureaucracy” with the authority to “develop and promote” water supply and land utilization systems. (*note-The PFRA was modeled after the U.S. Bureau of Reclamation.) (Glenn 1999:21)

1970s- As the federal government withdrew from irrigation, the Alberta government increased investment in infrastructure to foster economic diversification. It focused on already established sectors, including irrigation, to develop the agricultural economy. Targeted sectors were livestock and specialty crops such as potatoes, corn and carrots, which could supply expanded processing industries. Water development was taken on by the province, first by the Water Resources Division of the Alberta Agriculture Department. The Water Resources Division eventually became the nucleus of Alberta's Environment Department, which expanded rapidly through the 1970s to support the irrigation expansion that the provincial government had committed to. (Glenn 1999:22)

1970-Alberta introduced a program to share costs of rehabilitating irrigation works in the southern part of the province. The LIND began a period of expansion. By 1975, it was committed to supply water for 44,000 hectares but the district was unable to supply that much and was forced to ration water in dry years. With recurring shortages, pressure increased on the provincial government to make more water available in the district. (Glenn 1999:24)

1970-The Environmental Conservation Authority (ECA) was established by the Social Credit government of Alberta as an environmental protection agency. Its mandate was to conduct public hearings and advise the cabinet on environmental concerns resulting from development projects. Its title notwithstanding, "it had no authority" and served only in an advisory capacity. (Glenn 1999:31)

1971-Peter Lougheed and the Progressive Conservative Party won the provincial election in Alberta. The Social Credit Party was in opposition for the first time in 35 years. The Conservatives had campaigned on shelving plans to divert water from the north to the south although the plan was "dear to hearts of the irrigation community." The Tories took 49 of 75 seats but were completely shut out of the 12 ridings in the irrigation belt, south and east of Calgary. To make inroads there, the new government "threw off its concerns about inequity in government subsidization of irrigation and water development and set out to diversify the agricultural sector and to win favor with the irrigation community." (Glenn 1999:25)

1973-Ownership of irrigation networks was transferred from the federal government to Alberta. (Glenn 1999:23)

1974, June-The Alberta Water Management Service (WMS) launched a study to investigate potential dam sites in southern Alberta. (Glenn 1999:25)

1975, March-A provincial election was held in Alberta. During the campaign, the Conservatives promised public money for the rehabilitation of the irrigation infrastructure and an increased supply of water for irrigation based in part on the regulation of the Oldman River. The Tories, who were reelected, won 9 of 12 seats in the irrigation belt. (Glenn 1999: 26)

Part 2: Planning and Construction of the Oldman River Dam

1975-The newly reelected Conservative government in Alberta announced its “Water Management for Irrigation Use” Policy. It expressed a commitment to irrigation development and consolidated control over the supply systems to irrigation districts. The key to feature of the commitment to an increased supply of water was the development of the Oldman River for irrigation. (*note-Alberta committed \$44 million to rehabilitate and enlarge irrigation headworks and \$65 million for water storage on the Oldman River. In addition, the Alberta Department of Agriculture promised to spend \$90 million to rehabilitate and enlarge irrigation distribution systems.) (Glenn 1999:26)

1975-The Environmental Conservation Authority (ECA) came into conflict with the Alberta Environment Department when the former rejected a plan to construct a dam on the Red Deer River. The province announced that it would build the dam despite the findings of the ECA. (Glenn 1999: 27)

(*note- Between 1976 and 1977, tensions increased between the ECA and the Alberta government. Alberta was placed in the awkward position of ignoring its own environmental watchdog. Following the release of the final report on the Red Deer Dam, the ECA was legislated out of existence and Environmental Council of Alberta was created.) (Glenn 1999:32)

1976, June 14-The Alberta Environment Department released a 5 Volume report outlining the need for a dam on the Oldman River. Nine sites were considered. The present location of the dam, Three Rivers, ranked 6th in terms of environmental impact but was considered the most suitable overall because it could most economically supply water to the Lethbridge North Irrigation District (LNID). The report did not disguise the fact that the dam was primarily intended for irrigation. (Glenn 1999:26) With the announcement of the proposed dam, a small number of farmers who would be displaced by the project organized the Committee for the Preservation of the Three Rivers (CPTR) to lobby the government against it. In addition, the Peigan told government that they saw the terms of Treaty 7 as meaning that they owned the river, they demanded consultation if the development was to take place. Because of the mixed reaction to the announcement of the project, the Alberta government decided on conducting more studies so the government would not have to battle anti-dam forces on two fronts at once. (*see directly above) (Glenn 1999: 27)

1976, November-Alberta announced Phase II studies were to be undertaken to investigate potential dam sites other than Three Rivers. Included in the alternate sites was Brocket on the Peigan Reserve. The Phase II studies considered only water supply alternatives, an indication that Alberta had decided to build a dam somewhere on the Oldman River by this time. The organization that undertook the Phase II study, the Oldman River Study Management Committee (ORSMC), was considered to be heavily biased toward irrigation and underrepresented with regard to environmental and aboriginal interests. (Glenn 1999:28)

1976-The Water Management Service (WMS) of Alberta Environment informed the Peigan that they wished to obtain additional reserve land to increase the capacity of the LNID headworks and requested permission to undertake surveys. The Peigan responded that the 1922 agreement for the LNID headworks was invalid because the Federal Government had not adhered to the requirements of the *Indian Act*. The Peigan said that they would negotiate for the new project but that compensation was due for the past use of the land. Alberta said the dispute over the 1922 agreement that was a separate issue that was not to be tied to the new project. (Glenn 1999:30)

1978, March- As the Peigan and the WMS continued discussions, the Peigan Band Council issued a permit was granted to undertake the survey and engineering studies for the expansion of the LNID headworks.(Glenn 1999: 30)

1978, May-Frustrated with Alberta's inaction on the compensation issue, the Peigan revoked the permit granting access to the reserve and blocked WMS and the LNID personnel from getting to the diversion weir. The LNID obtained an injunction from the Alberta Supreme Court to end the blockade. The immediate problem was resolved but the bigger issue over access to the land required for the expansion remained. The dam would have been of little value without a bigger headworks capacity to get water to LNID, so the province "reluctantly" agreed to negotiate with the Peigan over compensation. Although the blockade began in 1978, talks did not formally begin until the fall of 1979. During the blockade, the Peigan filed a statement of claim in Alberta Court of Queen's bench against LNID and the Alberta government regarding the 1922 surrender of the land for the original headworks. (Glenn 1999:30)

1978, August 26- The report on the Phase II Studies were released. The Management Committee report recommended a "strategy for water and land management" in the Oldman Basin based upon the construction of the Oldman dam and a program of "integrated irrigation and water development." It was essentially a blueprint implementing 1975 Water Management for Irrigation policy in the Oldman basin. (*note- Water storage capacity in the Oldman system to be increased by 600,000 acre feet (740,000 cubic decameters), irrigation acreage to increase by nearly 300,000 acres (121,000 hectares) to 850,000 acres (344,000 hectares) by 2005.) Two potential dam sites, Brocket (on the Peigan Reserve) and Three Rivers were found to be roughly comparable from technological, economic & environmental perspectives. Although the Phase II report acknowledged potential political and jurisdictional issues surrounding the possible location of the dam on the Peigan Reserve, the final choice of a dam was left to the politicians. (Glenn 1999: 28-29).

1978, November-The Environmental Council of Alberta (ECA) conducted ten days of hearings in eight communities. A total of 238 opinions were submitted to the ECA. (Glenn 1999:32)

1979, August- The ECA delivered its report and recommendations, "[t]o the dismay of the government, the irrigation community, and critics of the new ECA, the panel concluded that **'an onstream dam is not required at this time nor in the foreseeable**

future.” The ECA report did not refer to potential negative environmental impact or to adverse effects of a dam on the Peigan. It found that a new dam was not necessary “to support irrigation expansion to the level that the panel recommended.” Although the ECA concluded that a dam was not required in the foreseeable future, the panel never rejected the dam outright. Should a dam be required, then sites at Brocket and Three Rivers were preferred. The ECA report rated Three Rivers as the least preferable option with the greatest environmental and social impact with no appreciable cost or engineering advantage over Brocket. (Glenn 1999:33)

1980, March –In the Speech from the Throne, the Alberta government promised a decision on Oldman development and renewed its promise to develop water resources. (Glenn 1999:35)

1980, August-The dispute between the Peigan and the Alberta government over the 1922 agreement was resolved. The dispute was resolved after two years and 40 meetings. The Peigan received a cash settlement of \$2.5 million, with \$1 million to be held in trust. The Peigan granted “irrevocable proprietary interest” in the 4.1 acres (1.7 hectares) of riverbed and 50 acres (20.5 hectares) of reserve land for the rehabilitated headworks. (Glenn 1999: 30)

1980-August 30-**Alberta announced a plan to construct the dam at Three Rivers.** The final decision of the location of the dam delayed until the submission of a proposal from the Peigan for a dam located at Brocket. Alberta committed to an ambitious expansion of the policy decisions of 1975 regarding water management, the need to rehabilitate existing irrigation systems and “**the requirement of future expansion.**” The decision to build a dam on the Oldman would increase the irrigated land by more than 50 percent. (Glenn 1999:37)

1981, January- A Band election was held on the Peigan reserve, the surrender of the land for the weir in 1922 was the major issue. The new Band Council cancelled the agreement of 1980 and negotiations resumed. **A new mediated settlement between the Peigan, Alberta and federal government was announced in June 1981.** Under the new agreement, the Peigan received a \$4 million payment with annual payments of \$300,000 for the life of the agreement. Alberta promised technical support for irrigation development on the reserve & advice on the construction of the dam at the Brocket Site, training programs etc... The Peigan agreed to unquestioned access to the headworks and the right of way, the use of more land during the construction phase for four years, unlimited access to the headworks and the withdrawal of the 1979 claim against Alberta and the LNID “and any previous claims.” The provincial and federal governments committed to supporting the Weasel Valley Water Study, to be managed by the Peigan regarding the impact of the dam on the reserve for both locations. The study, undertaken between 1981 and 1983, considered various impacts of the dam project on the Peigan. The Band used the study as the basis of their proposal to build the dam at Brocket. (Glenn 1999:39-40)

1983, November-The Peigan released the Weasel River Valley Water Study for the development of a dam at Brocket. **The Peigan proposal was clear that the province would not have sole ownership and control of the dam.** (Glenn 1999:40)

1984-summer-The drought during the summer of 1984 was reported to have been the worst since 1916 and the eighth dry year since 1977. In August, Premier Lougheed toured the drought-stricken areas and announced a \$30 million aid package. On August 9, Lougheed announced that **construction of a dam at the Three Rivers site would begin in 1986.** No advance notice was given to the farmers who were to be displaced or the Peigan who were waiting for a response to their proposal for a dam to be built at Brocket. (Glenn 1999:41)

1984, August 11- In response to the announcement of the Three Rivers dam, the Peigan announced that they would attempt to secure financial backing from the federal government and the private sector to build their own dam at Brocket. **The Peigan also restated their ownership of the water in the Oldman River. They threatened of a court injunction against the development of the river.** (Glenn 1999:42)

1984—August-Within days of the announcement of the dam, the Alberta Environment Department released its report on the South Saskatchewan River Basin Planning Program. The report was to be the basis of public hearings in the fall of 1984. To avoid conflicts with ECA (as it had in the past), the hearings would be presided over by the Alberta Water Resources Commission (AWRC), an organization which was considered to favor the expansion of irrigation. (Glenn 1999: 24)

1984-fall-The AWRC hearings were undertaken to consider the South Saskatchewan River Basin Planning Program. As expected, they became a forum for the debate over the Oldman project. Critics of the proposed dam on the Oldman River included fish and wildlife groups. Some southern Alberta newspapers criticized the dam and the expansion of irrigation systems for marginal crops such as alfalfa and sugar beets. (*Pincer Creek Echo*, Sept. 15, 1982) The AWRC report was released October 1986, a year and a half after the hearings. Its only comment on the Oldman dam was that it supported the government's efforts to mitigate negative effects in the design and operation of the dam. (Glenn 1999:44)

1986, January 20-**The Peigan Band Council issued a “proclamation” asserting they were reserving a right to the natural flow of the Oldman.** They invited the new Premier of Alberta, Don Getty, to negotiate a new compensation agreement regarding the dam project. (Glenn 1999: 44)

1986, March 10-Alberta applied for federal approval for the dam under the *Navigable Waters Protection Act*. Final designs were completed and construction began on two 900 meter-long diversion tunnels to be used during the construction of the dam itself. (Glenn: 1999:47)

1986, April 11-The **Peigan filed claim against Alberta in Court of Queen's bench claiming rights to the water in the Oldman River** and ownership of the riverbed on the reserve. In addition, they requested an injunction to stop construction of the dam because of potential damage from construction and operation of the dam. (Glenn 1999: 46)

1986, May-Following a provincial election, the Conservative government began a public information campaign to promote the dam project. It announced a mitigation planning strategy, the "Environmental Mitigation and Opportunities Plan." The goal of the mitigation strategy was to avoid or reduce negative effects of the dam. It included plans for archaeological salvage and the development alternative habitat for affected animal populations. (Glenn 1999:44)

1986, June- **The Peigan filed a claim in Federal Court against the government of Canada and the Minister of Indian Affairs.** In it, the Peigan claimed exclusive right over the water in the river as it flowed through the reserve. Because the dam would result in harm to the Peigan, the fiduciary duty of the federal government obligated the latter to protect the interests of the band by preventing the construction and operation of the dam. (Glenn 1999:46)

1986-fall-Construction began on two large tunnels required to divert the Oldman River to allow construction of the dam structure itself. The twin tunnels were to be completed by 1988. Construction of the dam was to begin upon their completion. (Glenn 1999: 49)

1987, August 18-Because the construction of the diversion tunnels required work in the river, the Alberta Environment Department "quietly issued itself a license, under the *Water Resources Act*, to construct the Oldman River dam." (Glenn 1999:49)

1987, August 29- The Friends of the Oldman River (FOR) was established to oppose construction of the dam. (Glenn 1999:50)

1987, September 18-The federal Minister of Transport issued an approval to Alberta under the *Navigable Waters Protection Act* for work on the Oldman dam project. (Glenn 1999:61)

1987, September 24-FOR filed a statement of claim in the Alberta Court of Queen's bench in Calgary against Alberta's issuing a license for the construction of the dam without public notice. Other requirements set out in the *Water Resources Act* had not been met. FOR sought an injunction against the construction of the dam. (Glenn 1999: 51-52)

1987, October- An archaeological study commissioned for the project recommended that "Three Rivers should be designated a Provincial Historical Resource, and that the Oldman dam should not be constructed." (Glenn 1999:53)

1987, November-The Canadian Environmental Defense Fund announced financial assistance to FOR. High profile environmentalists such as David Suzuki, June Callwood and Farley Mowat publicly supported FOR's opposition to the dam (Glenn 1999: 52)

1987, December 8-FOR's legal challenge of Alberta's license to build the dam was heard in court. **The license to build the dam was quashed because affected parties were denied their right to voice their concerns.** In addition, Alberta failed to acquire certain clearances required by the *Water Resources Act*. (Glenn 1999: 54)

1987, December 10-An emergency debate on the ruling was held in the Alberta Legislature. **Alberta filed an appeal** of the court decision and the order to quash the license was stayed until the provincial appeal could be heard in February, 1988. **Construction was allowed to continue until the Alberta's appeal was heard in court.** (Glenn 1999: 55)

1987, December-A pro-dam lobby group, the Southern Alberta Water management Committee (SAWMC) was formed to counter "falsehoods" spread by opponents of the dam. On December 22, 1987, they met with Premier Getty to advocate the construction of the dam. (Glenn 1999: 56)

1988, February 5-**Alberta issued a new license for construction on the project.** Again, no prior notice of the application was issued. Alberta dropped its appeal of the of the December 8, 1987 ruling on February 8, 1988. (Glenn 1999: 55)

1988, April-FOR challenged the new license in court because the province failed to provide the information required to support a license to build a dam for irrigation purposes in addition to not providing public notice of the application for a license. The Crown refuted FOR's claim because **"the department had applied for and been issued a license to impound water for the general purpose of water management, not for the specific purpose of irrigation."** The Crown also argued that the license had been issued after what it considered adequate public debate. **FOR's application was denied.** (Glenn 1999: 56)

1988, July 19-The **Oldman River was diverted** through the twin tunnels. Construction of the dam could begin. (Glenn 1999: 57)

1988, August 2-Dr. Martha Kostuch, the Vice president of **FOR, laid charges** against the Environment Minister of Alberta, the project manager and the two construction companies in front of a Justice of the peace in Pincher Creek **under the federal Fisheries Act for the destruction of fish habitat in the river.** (*note-Though the Federal Department of Justice supported the charge initially but the case was taken over by the provincial Attorney General. The charges were then dropped on account of insufficient evidence. FOR offered to provide more evidence but Alberta declined the offer. The case was referred to the RCMP who were to report their findings to the federal Department of Justice, "a move that the head of the RCMP's commercial crime division described as 'unique.'" (Glenn 1999: 58)

1988, September-The Alberta Environment Minister was demoted in a cabinet shuffle. Premier Getty acknowledged the Environmental Department was in a conflict of interest for being both the proponent and the regulator of water development projects. Responsibility for the dam was transferred from Environment to Public Works, Supply and Services. (Glenn 1999: 59-60)

1988, December-The RCMP reported its findings to the federal Department of Justice, “[t]hus began six years of legal maneuvering, with FOR persisting in their determination to charge Alberta for violating the *Fisheries Act* and federal and provincial officials using every means provided by the justice system to prevent the case from coming to trial.” (Glenn 1999: 58)

1989, January- The Canadian Wildlife Federation (CWF) filed notice in Federal Court challenging a license issued to the Saskatchewan Water Corporation by the Federal Minister of the Environment, under the *International Rivers Improvement Act*, for the Rafferty-Alameda Dam Project. The challenge was based on the grounds that the license was issued without subjecting the project to the review of the federal Environmental Assessment and Review Process Guidelines Order (EARPGO). In Alberta the decision was seen by environmental advocates as a new opportunity to attack the project. On September 18, 1987, the federal Minister of Transport issued an approval to Alberta under the *Navigable Waters Protection Act*. Because the Oldman dam affected the Peigan and the fish habitat (both federal domains) FOR announced it would force the federal government to apply the Environmental Assessment Review Process Guidelines Order (EARPGO) by taking the issue to court. (Glenn 1999: 61)

1989, February-**FOR met with the Peigan to coordinate opposition to the dam.** They shared a common objective but could not agree on a common approach. Lawyers for the Peigan lawyers wanted to stress aboriginal and Treaty Rights. This strategy left little room for FOR, “**In the end, they agreed to go their separate ways.**” (Glenn 1999: 62)

1989, March 20-Provincial election was held in Alberta. The Conservatives won their 6th straight victory. On April 13, 1989, Premier Getty announced a new cabinet. The new Environment Minister was rookie MLA, Ralph Klein. (Glenn 1999:62)

1989, April -**FOR went to Federal Court to quash the federal approval of the Oldman dam and force an EARP of the project.** Plans for this action had been undertaken since 1987 by environmentalists in Alberta because of the effect on the dam on the fish habitat. A formal request to apply EARPGO to the federal Minister of the Environment by FOR was denied on the grounds that it “would not be appropriate” for the Federal government to intervene in the Oldman. The Peigan had also requested the application of EARPGO. Indian Affairs Minister Pierre Cadieux only responded to the request in March 1989 after several months of inaction. Cadieux’s response to the Peigan was not encouraging, he promised to forward the request to the Minister of the Environment (Lucien Bouchard). Cadieux could only offer hope for a mutually acceptable solution. (Glenn 1999: 61-62)

1989-spring-Alberta was worried about the EARPGO and its implications for other development projects including logging, pulp mills and oil sands. **The province maintained that the Oldman dam was entirely a provincial issue. Also, the federal government was aware that it required Alberta's support for its constitutional agenda.** Alberta was prepared "to go to the wall" to protect what it considered its right to develop resources without federal interference. (Glenn 1999: 64)

1989, June 12-FOR held a fundraising concert in Maycroft, Alberta. The concert raised \$20,000 and added 10,000 names to a petition against the Oldman Dam. (Glenn 1999:66-68)

1989, June 15-The Court allowed Alberta to intervene on the side of the federal government in the FOR challenge of the *Navigable Waters Protection Act* approval for the Oldman dam. **Alberta requested the withdrawal of the Transport Canada approval (1986) on the grounds that Alta was not subject to the *Navigable Waters Protection Act*.** Transport Canada referred the matter to Department of Justice for a legal opinion. That decision was never made public. (Glenn 1999: 64)

1989, June 22-**The Federal Court of Appeal dismissed the Saskatchewan appeal of the Rafferty-Alemeda decision. The federal Minister of the Environment was obliged to follow the EARPGO. For environmentalists the judgment "appeared to seal the fate of the Oldman Dam."** (Glenn 1999: 65)

1989, July 21-FOR presented its case to have EARPGO enforced in the Federal Court Trial Division in Calgary. FOR's case was based on the point that the Federal government should have applied EARPGO to the Oldman project before approving it. FOR asked to quash the approval of the dam and for the court to order the federal government to comply with EARPGO. Federal lawyers argued the EARPGO did not apply to the *Navigable Waters Protection Act*, and that the Department of Fisheries and Oceans was not bound by it. Alberta claimed that they did not need federal approval under the *Navigable Waters Protection Act*. Alberta wanted to have the federal approval of the dam quashed because the Province had no intension of reapplying for federal approval. The federal approval remained in force "until quashed by the federal Court of Appeal the following year." (Glenn 1999: 65)

1989, August 11-Justice Jerome ruled that **no requirement for environmental assessment under the *Navigable Waters Protection Act* or the *Fisheries Act*, so EARPGO was not required.** The Oldman project was considered significantly different than Rafferty-Alemeda which was subject to *International Waters Improvement Act* (which was subject to EARPGO). **FOR's application for the application of EARPGO was turned down.** (Glenn 1999: 65)

1989, September-FOR **launched an appeal** of the ruling. (Glenn 1999:66)

1990, January-Federal Environment Minister Lucien Bouchard ordered work on Rafferty-Alemeda to stop after the federal Court ruled that he must appoint a panel to conduct a public review as required by EARPGO. **Saskatchewan agreed to stop construction but by spring construction continued for safety reasons. Alberta continued with construction of the Oldman dam on the same basis.**(*note-In Quebec, the Cree launched legal action against the James Bay 2 project. As these environmental conflicts continued in three provinces, there was increased tension across the country **over the impending “crisis” over the Meech Lake Constitutional Accord.** (Glenn 1999: 73) For Meech to succeed, the federal government required unanimous approval of the provinces by June 23, 1990.

1990, January 11- FOR pressed new charges against former Alberta Environment Minister Ken Kowalski and the construction companies for the destruction of fish habitat resulting from construction of the dam. The court date was set for April 26, 1990. The day of the hearing, the Attorney General of Alberta successfully applied to intervene and prosecute the case. On July 11, 1990, two days before the new trial date, the Attorney General stayed the charges. (Glenn 1999: 73)

1990, March 13-The Federal Court of Appeal overturned the ruling of the July 21, 1989. **The court ordered the federal Ministers of Transport and Fisheries and Oceans to comply with EARPGO. Alberta was not immune from the approval requirements of the Navigable Waters Protection Act, so further construction without federal approval would be a breach of federal law.** (Glenn 1999: 66)
Because the Oldman dam was only one third complete, **Alberta Public Works, Supply and Services continued to work on the dam citing safety concerns** if the river overflowed the construction site. (Glenn 1999: 70).

1990, April 23-**Federal Environment Minister Bouchard ordered a federal review of the Oldman dam but did not order a halt to construction.** He resigned from cabinet on May 21, 1990. His replacement, Doug Young, stated that construction of the dam should continue until it was safe to stop. No stop work order was issued. (Glenn 1999: 72)

1990, May-Alberta released its “Water Management Policy for the South Saskatchewan Basin.” The irrigation expansion guidelines in the policy **increased the area to be irrigated by 34,000 acres (14,000 hectares) more than the ORSMC had recommended “as the ultimate irrigated acreage to be supplied from the Oldman system, with the Oldman dam in place.”** (Glenn 1999: 74)

1990, June 23-The deadline date set for provincial ratification of the Meech Lake Accord. The Accord was effectively killed on June 21, when Elijah Harper refused to make approval unanimous in the Manitoba Legislature. Harper’s action inspired direct action for aboriginal rights across the country.

1990, July- **Although the injunction against construction of the Oldman dam was still in force, works continued because of safety concerns raised by Alberta**

authorities. The dam was 40 metres high, over halfway to its completion height of 76 metres. The dam project was 80 percent complete. (Glenn 1999: 74)

1990, July 11-A shootout at the Mohawk barricade in Oka, Quebec. A police officer was killed (the Mohawks had constructed the barricade in March 1990). In southern Alberta, a small group of Peigans were inspired by the Mohawks and formed the Lonefighters Society. They were unarmed and largely unorganized but were determined to stop construction of the dam. **Frustration was increased among the Peigan because construction on the dam continued even though there was a court order to stop it.** (Glenn 1999: 75-76)

1990, August 3-The Lonefighters invited the media to a groundbreaking ceremony of a channel intended to cut the supply of water to the LNID irrigation works. The goal of the action was to stop construction of the dam. FOR supported the Lonefighters with a donation of \$5,000. The Peigan Band Council did not support the action of the Lonefighters as it was attempting to reach a negotiated settlement over the dam. (Glenn 1999: 77)

1990, August 7-The RCMP tried to bring members of the Peigan Band Council together with representative of the Alberta Environment Department. The police assured Chief Bastien that they would not enter the reserve without being accompanied by him or a band councilor. (*note-The RCMP had entered the reserve with a large force during the 1978 blockade.) (Glenn 1999: 79)

1990, August 13-A public meeting was held on the Peigan reserve, 300 Band members attended. Opinion was divided between those in favor of economic development and “traditionalists” who opposed development at the expense of spiritual and cultural values. The Chief personally supported the goals of the Lonefighters but the Band Council took no unequivocal stand. Chief Bastien took no official position on the Lonefighters’ action. (Glenn 1999: 80) Pro-dam forces beyond the reserve were placed in an ironic situation, **“though construction was technically illegal at this time, supporters of the dam called for the application of law and order.”** Because the Lonefighter diversion was on the reserve and Alberta was not being denied access to the LNID weir, the Lonefighters did not consider their action to be illegal or a breach of the 1981 agreement over access to the LNID irrigation weir. The RCMP agreed that the protesters were not breaking the law. (Glenn 1999:82-83)

1990, August 28-The Lonefighters broke through the bank of the Oldman River. Water began to flow through the excavated oxbow channel. (Glenn 1999: 84)

1990, August 29- The Province was granted an injunction to stop the diversion attempt by the Lonefighters. The injunction was served to the Lonefighters the following day and work on the diversion ceased without incident. (Glenn 1999: 85)

1990, September 7-While the leader of the Lonefighters, Milton Born With a Tooth, was returning from Montreal where he met with representatives of the Mohawk people, **the**

RCMP and a crew of workers from Alberta Environment entered the reserve and proceeded to the LNID headworks. The authorities entered the reserve without informing the Chief, though attempts to contact him were made. The government had promised to inform the Lonefighters of any action regarding the LNID weir but did not do so. Faced with a force of at least 30 police officers, panic broke out in the Lonefighter camp. In the confusion, Born With a Tooth, who had entered the Lonefighter camp, fired two shots. He claimed that they were into the air. By 10 a.m., Alberta authorities ordered their personnel to leave the site, the Lonefighters constructed a bunker and what the media called an “armed standoff” began. (Glenn 1999:87-91)

1990, September 8- A notice was filed seeking to quash the injunction against the Lonefighter diversion. The judge agreed to hear the case and ordered both sides to “maintain the status quo” and refrain from confrontation at the site. Justice William Egbert warned that any breeches of the order would be dealt with severely. The RCMP withdrew from the reserve and the “standoff” was over. (Glenn 1999: 92)

1990, September 11-The Lonefighters were given official support by the Peigan Band Council. (Glenn 1999: 94)

1990, September 12-The court heard the case regarding the quashing of the injunction that halted the Lonefighter diversion. The lawyer for the Lonefighters argued that the injunction should be lifted because the issue of who owned the water in the Oldman River remained unresolved, and was to be decided by another court. In addition there was no evidence that the diversion would prevent the use of water in the river by others. The Crown argued that the injunction should remain because the province’s use of the LNID weir, guaranteed in the 1981 agreement was being hindered by the diversion. The following day, the judge denied the request to quash the injunction. (Glenn 1999: 95)

1990, September 18-Milton Born With a Tooth was arraigned on weapons charges and was denied bail on the grounds that his vow to stop the dam posed a danger to society. He was denied bail three times over a two and a half month period. (Glenn 1999:95)

1990, November 2-Premier Getty acknowledged receipt of a **Peigan Band Resolution prohibiting any work at the site of the dispute for six months.** The Premier stated that while the province was eager to enter into talks over the issues raised by the Band during the previous summer but that repairs to the LNID weir would proceed and the band Council Resolution would be ignored. (Glenn 1999: 96)

1990, November 30- **Alberta Environment officials accompanied by as many of 70 RCMP officers entered the reserve and repaired the damage to the site.** The area was secured and the repairs were completed by December 2. There was no opposition to the incursion at the site but the failure of the government to notify the Band Council of their presence until after work had begun was seen as “another broken promise” and a total disregard for the Peigan according to Chief Bastien. (Glenn 1999:98)

1990, December 17-Born With a Tooth was arraigned on six additional charges. He was released on bail on December 19. (Glenn 1999:98)

1991, February 25-After unsuccessfully trying to have the trial moved from Fort Macleod to ensure a fair hearing, Born With a Tooth's trial began in front of an all white jury. The lawyer for the defense, Karen Gainer was denied permission to discuss the spiritual beliefs of the Peigan in court. (Glenn 1999: 98-99)

1991, March 5-Born With a Tooth was found guilty on six charges. He was sentenced to 18 months incarceration. The case was appealed on 16 separate grounds. The guilty verdict and the conduct of the trial created a public outcry, particularly among church groups. The Minister of Indian Affairs, Tom Sidden, was reportedly "inundated with letters" of concern about the case. In June 1992, the appeal was heard and a new trial was ordered because evidence had not been admitted. The conduct of the presiding judge of the original trial, Justice Maclean, was reviewed by the Canadian Judicial Council. Although his conduct was criticized by the Council, it did not warrant his removal from office.) (Glenn 1999:101)

1990, November-FOR filed notice in federal Court to order the Minister of the Environment to appoint an environmental review panel for the Oldman dam, as was required by EARPGO. The review panel was announced on November 16, four days prior to FOR's notice was to have been heard in court. The **Environmental Assessment Review Panel (EARP)** was to review the studies undertaken by the province in addition to any further information that was required "to fully understand the project and its potential impacts." It was authorized to undertake its own studies and conduct public hearings. Key elements in the EARP hearings were the relationship of the project to the *Navigable Waters Protection Act* and the *Fisheries Act*. The Chair of the EARP, Dr. W.A. Ross, stressed the impartiality of the panel and that, "[c]ompletion of the dam, now 80 percent finished, will not make any material difference in the nature of the enquiry being undertaken by the panel, nor to the recommendations expected to flow from its work." (Glenn 1999: 103-104)

1990, December 20-Alberta attempted to have the EARP suspended on the grounds that the Province's appeal of the March 1990 Federal Court decision had not been heard by the Supreme Court. Alberta's request to suspend the EARP hearings was rejected. The Province had earlier stated that it would not cooperate with the federal review panel. (Glenn 1999:104).

1991-The EARP conducted preliminary hearings, identified gaps in the information about the project and commissioned studies. Wildlife studies were found to have been deficient in almost every category. No wildlife impact assessment had been undertaken by the Province. The Department of Fisheries and Oceans acknowledged its responsibility for the preservation of fish and fish habitat and submitted an extensive list of informational deficiencies in provincial assessments. Environment Canada noted that information was lacking on the downstream effects of the dam. The EARP recognized the cultural significance of the Oldman River to the Peigan and ordered additional studies and an

independent review of the debate over the archaeological significance of the area to be flooded. **The EARP criticized the federal government for not commissioning its own studies and relying on those undertaken by proponents of the dam.** (Glenn 1999: 104-107)

1991, September-The EARP published its technical studies. In the introduction to the report, the authors noted, “it was a challenge for the contributors...to base their response... on information provided by the proponent.” Information requested of Alberta by the EARP was not available because it either had never been collected or was provided too late for submission to the panel. Alberta also denied the EARP access to its employees or consultants. (Glenn 1999: 109)

1991, November-The EARP undertook public hearings in southern Alberta. Alberta refused to formally participate in the review, and Public Works, Supply and Services sent a “truth squad” to follow the EARP. Although Alberta refused the EARP access to its employees and consultants during the research phase, many of them made presentations to the panel. (Glenn 1999:110)

1991, December-The EARP concluded its hearings and retired to prepare its report. (Glenn 1999: 110)

1992, January 23-The **Supreme Court of Canada** decided that under the terms of the *Environmental Assessment and Review Process Guidelines Order* (EARPGO), “**the federal Minister of Transport was required to conduct an environmental impact assessment with respect to Alberta’s Oldman River dam project.**” **The Court found the EARPGO was not “mere administrative directives, but that they had the force of law, and consequently, had to be complied with in all cases to which they applied.”** (Hébert 1992: 1)

With the decision of the Supreme Court, the work undertaken by the EARP during 1991 was legitimized. (Glenn 1999: 110)

1992, April- Ownership of the Oldman dam was quietly transferred from Alberta Public Works, Supply and Services to Alberta Environment. (Glenn 1999: 110)

1992, May-The EARP report on the Oldman dam was submitted to the federal government. It concluded, “**that the environmental, social and economic costs of the project are not balanced by corresponding benefits and finds that, as presently configured, the project is unacceptable.**” The first, and preferred recommendation of all Panel members, with one exception, was to “**Decommission the dam by opening the low level diversion tunnels to allow unimpeded flow of the river.**” Because the dam was all but complete, the panel made 22 other recommendations based approval of the dam based on “stringent conditions.” The Panel stressed that an agreement between the Peigan and the proponents of the dam was necessary as was a long term commitment to mitigating “the many environmental impacts of the project.” (Report of the Environmental Assessment Panel-Oldman River Dam 1992: 6) (*note-See Appendix 1)

Alberta disregarded the EARP report. By the time the EARP report was released, the dam was fully operational. (Glenn 1999: 113)

Part 3: Conflicts since the Completion of the Oldman River Dam

1992, August-The Alberta Water Management Service (WMS) issued itself a license to operate the dam. On December 7, 1992, new licenses were issued to seven irrigation districts in the Oldman basin to divert an additional 387,000 cubic decametres of water from the Oldman system. (Glenn 1999: 117)

1992, December-Premier Getty resigned and was replaced by Ralph Klein. The Conservatives won their seventh straight majority in the election of June 1993. (Glenn 1999: 120)

1993, January-After a year of federal inaction on the EARP report, **FOR applied to the federal Court to order the Federal Minister of Transport to implement the recommendations of the Oldman environmental assessment panel.** The case was heard in May 1993. Judge Rothstein ruled “that the minister was required to take action only on those panel recommendations that the federal government agreed should be implemented.” In September 1993, the federal government, as expected rejected the decommissioning of the dam and submitted responses to each of the other recommendations of the EARP report. (Glenn 1999: 117-119)

1993, March-After two years of appeals by Alberta, Dr. Martha Kostuch’s (of FOR) legal action against the province for the destruction of fish habitat went to trial in provincial Court. The charges were stayed by the Attorney General of Alberta. In November 1993, after the appeal was denied in Court of Queen’s Bench, Kostuch applied to have her case heard at the Supreme Court of Canada on the grounds that her right to prosecute the government was protected by the Charter of Rights and Freedoms. In May 1996, the Supreme Court of Canada announced that it would not hear Kostuch’s appeal (Glenn 1999: 121-122)

1993, July-Alberta Water Management Services (WMS) announced the appointment of the Oldman River Dam Environmental Advisory Committee (EAC) to advise the Alberta government on the operation of the dam and the mitigation strategy for the project. In an attempt to keep environmentalists off the ECA, Alberta initially required that all members of the ECA be residents of the Oldman basin. After public pressure, the residency requirement was dropped in 1994, and the President of FOR, Cliff Wallis, was appointed to the committee. (Glenn 1999: 119)

1993, August-**The Canada-Alberta Agreement for Environmental Assessment Cooperation was signed in the waning days of the Mulroney government.** The agreement was negotiated without public consultation. The agreement to cooperate on environmental assessments was “designed to avoid repetition of the friction that developed between them over the Oldman River dam.” The agreement facilitated the

development of other water projects in Alberta, including the Pine Coulee and Little Bow dams. (Glenn 1999: 127)

1993, September-Alberta passed *Environmental Protection and Enhancement Act*, a consolidation of much of its environmental laws, including those on environmental assessment. (Glenn 1999: 125)

1993, September- Transport Canada issued federal approval for the Oldman dam under the *Navigable Waters Protection Act*. A key recommendation of the EARP Report in May 1992 had been that federal approval of the dam should be withheld until an agreement between the Peigan and Alberta was reached. The Peigan leadership considered the approval to be a “blatant contradiction of the panel’s recommendations.” (Glenn 1999: 235-236) (see Appendix 1-Recommendation 4)

1993, October-Chief Bastien of the Peigan wrote an open letter to the Department of Indian Affairs expressing his outrage at the failure of the DIA to protect their rights. By issuing federal approval for the dam, the federal government was overriding seven of the Oldman River Dam Environmental Assessment Panel’s recommendations. (Glenn 1999: 236)

1993, October-The Liberal Party under Jean Chrétien won the federal election.

1993, November- The Canadian Council of Ministers of the Environment (CCME) began negotiations towards a National Accord on Environmental Harmonization. Governments saw the Harmonization Accord as a means to streamline the environmental assessment process. One critic called the harmonization efforts “an Orwellian mission” because it limited the ability of environmental advocates to petition different levels of government for support. (Nikiforuk 1997: ii)

1994, February 22-Born With a Tooth received a new trial at the Court of Queen’s Bench in Calgary on the charges stemming from the shooting at the LNID weir. Although Judge Willis O’Leary “bend over backwards to accommodate the presentation of defense evidence,” Born With a Tooth was again found guilty and sentenced to 16 months. He served the obligatory 1 year in jail. (Glenn 1999: 123)

1995- The *Canadian Environmental Assessment Act* (CEAA) was proclaimed, “after five years of dithering and debate.” The text of the act fills more than 50 pages and “lawyers, business leaders and citizens unanimously agree that it is one of the most complicated pieces of legislation they have ever read.” In contrast the EARP Review Guidelines, which CEAA superseded, consisted of only six pages. (Nikiforuk 1997: 8) CEAA was opposed by both environmentalists, who considered it to be too narrow in scope and provincial governments, who saw it as a federal infringement on provincial jurisdiction. (Glenn 1999: 123-124)

1996, May-The Supreme Court announced it would not hear the appeal of Martha Kostuch’s case against Alberta for destroying fish habitats. The Canadian Environmental

Defense Fund had called Kostuch's action, "the environmental case of the decade."
(Glenn 1999: 267)

1998, January –The "Environmental Harmonization Accord" signed by Canada and all provinces except Quebec. Its stated goal was to avoid overlap between provinces and the federal government but the effect of it was to severely limit the scope of federal assessments. (Glenn 1999)

2001, November-A settlement was reached between the governments of Alberta and Canada with the Peigan band over damages resulting from the construction of the Oldman dam project. The Band received a \$64.3 million dollar payment, annual payments of \$500,000 and a payment of \$1,000 to each of the 2600 members of the band (*National Post*, Nov. 2, 2001)

2002, October-Members of the Piikani Band, formerly the Peigan band, ratified the agreement concluded between the Band Council, the federal and provincial governments. Of 1,848 eligible voters, 1,250 ballots were cast, 720 of which were in favor of the agreement. In addition to the support of band members for the agreement, four additional conditions were negotiated. They included, an environmental impact assessment of the Oldman River valley, the participation of the Piikani nation in the Oldman Dam Hydro Project, the establishment of a joint provincial-Piikani Committee on economic development initiatives and the use of Piikani labour and resources in the maintenance of the LNID canal. (*Alberta Sweetgrass*, October 2002, p.4)

2003-The "expected" implementation date of Alberta's "Water for Life: Alberta's Strategy for Sustainability," a comprehensive strategy for short-term and long term plans to manage water quality and quantity. Irrigation comprised of nearly 90% of all water use on the Oldman basin. (Guelph Water Management Group website)

2003. September 26-FOR petitioned the Environmental Commissioner of the federal Auditor General's Office regarding "Follow-up actions arising from the federal environmental assessment and approval of the Oldman River Dam project." (Petition No. 92B) (Office of the Auditor General of Canada website)

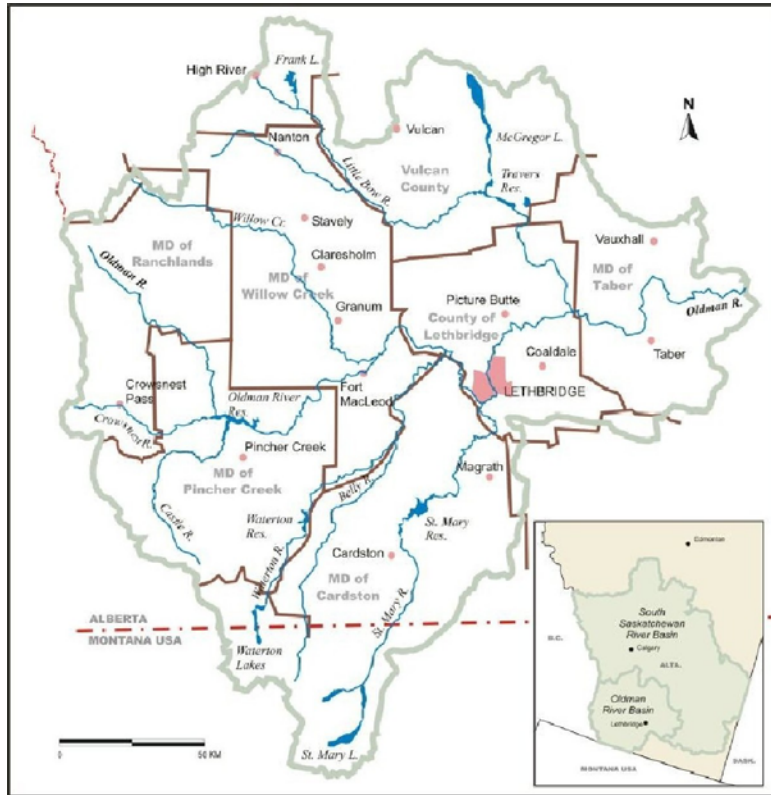
2004, June 21-FOR submitted a petition to the federal Auditor General's Office regarding "The environmental impacts of man-made dams." (Petition No. 118) (Office of the Auditor General of Canada website)

2004, September 7-FOR announced that it was submitting an Article 14 submission to the Commission on Environmental Cooperation (CEC). The submission alleged that the federal government failed to enforce and comply with the *Fisheries Act* and the *Canadian Environmental Assessment Act* (CEAA) with regard to the protection of fish habitats. (Alberta Environment network website)

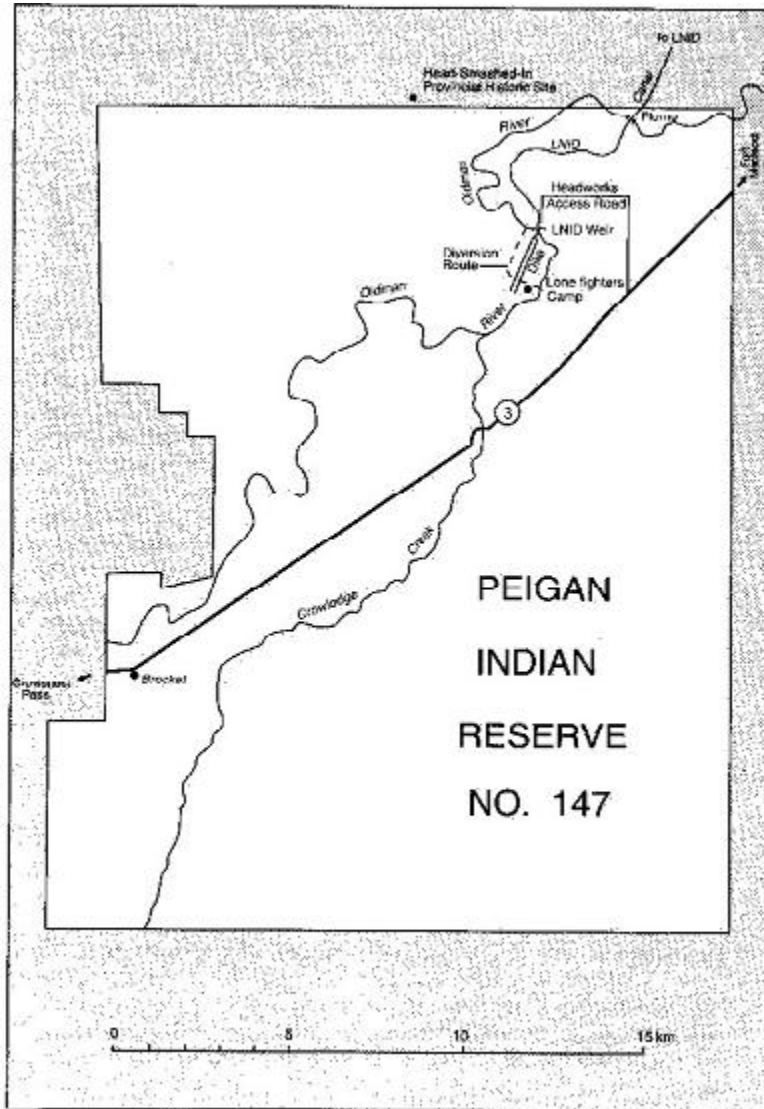
2005, May 9-FOR released information that federal monitoring of the *Fisheries Act*, a key element in FOR's ongoing opposition to the dam project, would be undermined by

cutbacks at the Department of Fisheries and Oceans. (Alberta Environment network website)

Oldman River Basin Map



Peigan Indian Reserve #147 Map



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<http://www.oag-bvg.gc.ca/dominopetitions.nsf/viewe1.0>

There is a fairly extensive discussion of current water use in the Oldman basin, undertaken by the University of Guelph Water Management Group, see website: http://www.uoguelph.ca/gwmg/wcp_home/Pages/O_ia_wm.htm

The final report of the Oldman River dam Environmental Advisory Committee (1996) is available online, see website:
http://www3.gov.ab.ca/env/water/reports/oldman_dam_report.pdf

Appendix 1

Recommendations of the Oldman River Dam Environmental Assessment Panel, May 1992

Source: Oldman River Dam Environmental Assessment Panel, *Oldman River Dam, Report of the Environmental Assessment Panel, May 1992*. (Ottawa: Department of the Environment, Federal Environmental Assessment Review Office, Department of the Environment, 1992).

Recommendation 1: Decommission the Dam

Decommission the dam by opening the low level diversion tunnels to allow unimpeded flow of the river.

Recommendation 2: Conditional Approval

If Recommendation 1 is not accepted and the Oldman River Dam is to be operated, attach stringent conditions to the approvals granted by the federal government. These conditions include the proponent reaching an agreement with the Peigan and making a long term commitment to mitigating the many environmental impacts of the project.

Recommendation 3: Environmental Management Committee

Create an Environmental Management Committee and give it full authority to mitigate and continue mitigating the major environmental impacts, especially those affecting fish, wildlife and riparian ecosystems. Programs and activities of the Environmental Management Committee should be open to public scrutiny.

Recommendation 4: Agreement Between the Proponent and the Peigan

Establish a negotiating process by which the proponent and the Peigan can reach an agreement on mitigation and compensation for environmental, social and cultural impacts of the project on the Peigan and Peigan Reserve.

Recommendation 5: Failure to Comply

If the proponent fails to comply with Recommendations 2, 3 and 4 then decommission the dam in accordance with Recommendation 1.

Recommendation 6: Hydrology

If the project is decommissioned, assess the extent and frequency of flooding on lands upstream of the dam to determine the best uses for the lands and to design appropriate reclamation projects.

If the project is operated, undertake monitoring and analyze the data to define more clearly hydrologic changes and mitigation options. Such a monitoring, evaluation and management program should be a condition of any approval granted by the federal government on this project.

Recommendation 7: Water Allocation for Conservation

If the project is operated, apply a condition to any approval issued by the Minister of Transport that a reserve of water for conservation purposes (such as minimum fisheries flows and flows sufficient to ensure

protection for riparian cottonwood forests) be set aside. It is further recommended that the determination of minimum flows for conservation purposes be assigned to the Environmental Management Committee.

Recommendation 8: Efficiency of Water Use

The federal government should support and encourage research, development and implementation of techniques for improved efficiency of water use.

Recommendation 9: Water Allocation to the Peigan

Withhold federal approvals for the project until an agreement between the Peigan and Alberta on water allocation is reached. In the interim, reserve and not allocate to others, the maximum amount of water that might be allocated to the Peigan.

Recommendation 10: Riparian Cottonwood Forests

If the project is operated, then monitoring, evaluation and management of riparian cottonwood forests should be a condition of any approval granted by the federal government to ensure the survival and continued health of these ecosystems.

Recommendation 11: Vegetation

If the project is decommissioned, undertake studies to determine to what degree the reservoir area should be revegetated and prepare and implement a reclamation plan.

If the project is operated, conduct surveys of plant species composition and abundance downstream of the dam to identify and quantify the effects of flow regulation. Further, reserve a portion of water in the reservoir to provide adequate flows to maintain riparian ecosystems.

Recommendation 12: Wildlife

If the project is decommissioned, the Environmental Management Committee should be responsible for identification and implementation of reclamation programs to restore the wildlife habitat of the reservoir area.

If the project is to be operated, the federal government should use its statutory powers to ensure that Alberta undertakes a fully funded, longterm, wildlife mitigation program (inclusive of the concerns of the Peigan people). The implementation of the program should be assigned to the Environmental Management Committee.

Recommendation 13: Rare Fish Species

If the project is decommissioned, modify at least one of the diversion tunnels to provide upstream fish passage past the dam. Until this measure is in place, upstream migrating fish should be trucked past the dam.

If the project is to be operated, a program to mitigate adverse effects on rare species should be a condition of any approval granted by the federal government. This program would be implemented under the auspices of the Environmental Management Committee.

Recommendation 14: Role of Fisheries and Oceans Canada

A clearer definition of the role that the Department of Fisheries and Oceans will play in fishery conservation and habitat protection in the provinces is needed. This should include the requirement for an

operational definition of no net loss, criteria and procedures for achieving no net loss, and plans for monitoring, evaluation and management of any programs to achieve no net loss.

Recommendation 15: Fish Mitigation

If the project is operated, encourage the Environmental Management Committee to adopt a realistic goal of upstream enhancement.

Recommendation 16: Reservoir Fisheries

If the project is decommissioned, establish woody vegetation on the stream banks in the reservoir area as soon as the reservoir is drained, to prevent excessive bank erosion and channel migration during the first few years of ecosystem recovery.

If the project is operated, routinely monitor fish in the reservoir for mercury levels during the first few years of reservoir operation. Provide results of the monitoring programs to the Environmental Management Committee for action as required.

Recommendation 17: Downstream Fisheries

As a condition of any approvals granted, the federal government should require that Alberta develop a plan of monitoring, evaluating, and managing downstream fisheries that would protect and enhance these populations. In addition, the Minister of Fisheries and Oceans should investigate the issue of fish passage and entrainment at the Lethbridge Northern Irrigation District weir and ensure that any necessary remedial measures are implemented.

The federal government should exercise its fiduciary responsibility to Native people and ensure that the rights of the Peigan to fish on their reserve are protected. One requirement is that a routine monitoring program for mercury in fishes downstream from the Oldman Dam be instituted.

The federal Minister of Fisheries and Oceans should seek a reserve of water in the reservoir for fishery management purposes. This reserve should be sufficient to ensure minimum flows downstream from the Lethbridge Northern Irrigation District weir and to provide flexibility in flow regimes to manage for conservation and enhancement.

The Environmental Management Committee should determine whether a multilevel water release structure is required to permit control over downstream water temperatures. If deemed necessary the Minister of Fisheries and Oceans should require its construction.

Recommendation 18: Archaeology and the Peigan

Withhold federal approvals for the dam until such time as the Peigan have reached an agreement with the proponent on the extent to which the Peigan should be compensated for cultural and spiritual losses in the reservoir area.

Recommendation 19: Peigan Band

If the project proceeds, Indian and Northern Affairs Canada should assist the Peigan in carrying out an assessment to identify and mitigate potential effects of the project on the Peigan people, religion, culture and land, and to assist the Peigan in negotiating the implementation of such mitigation as is necessary.

Recommendation 20: Economic Assessment of Projects

In providing environmental assessment panels with terms of reference, the federal Minister of the Environment should require project justification through such means as a thorough and balanced

assessment of both the economic efficiency and the regional development and social equity values of projects under review.

Recommendation 21: Navigation

If the project is decommissioned, Transport Canada should assess the marine safety of the project and identify any requirements to ensure safety of users.

If the project is operated and an approval for the Oldman River Dam is issued, Transport Canada should determine conditions for marine safety and include them as a part of the approval. Special attention should be paid to the instream fisheries mitigation measures, to the kayak run, to the recreation facilities around the reservoir and to the safety of the Lethbridge Northern Irrigation District weir downstream.

Recommendation 22: Emergency Evacuation Plan

Both the Alberta government and the Peigan should agree on an emergency evacuation plan very quickly. Indian and Northern Affairs Canada should provide whatever assistance is needed to encourage meaningful negotiations to achieve such an agreement. If such an agreement is not reached, The Alberta government as the project proponent should develop and make public a contingency plan to deal with evacuation on the Peigan Reserve.

Recommendation 23: Follow-up Programs

So that environmental protection may benefit from experience during the Implementation phase of projects, the Panel recommends that follow-up programs (monitoring, evaluation and management of environmental and socio-economic effects during the implementation phase of the project) should be a routine part of all projects proceeding to the implementation stage which are reviewed by panels.