SUMMER 2006

MILK RIVER WATERSHED NEWS

St. Mary/Milk River Project Federal Legislation Introduced

Mike Dailey, St. Mary Rehabilitation Field Coordinator

On June 14, members of the St. Mary Rehabilitation Working Group reached consensus on draft federal legislation authorizing the rehabilitation of the St. Mary Diversion System and addressing associated issues of the Blackfeet and Fort Belknap Tribes, and the Milk River Basin. The "St. Mary Diversion and Conveyance Works and Milk River Project Act of 2006" was introduced by Senator Conrad Burns, and co-sponsored by Senator Max Baucus, as Senate Bill 3563 on June 23, 2006. It was referred to the Senate Energy and Natural Resource Committee. Committee Chairman Pete Domenici (R-NM) has agreed to conduct a field hearing on the legislation in Montana some time in late summer or early fall. The House version, HR 5705, was recently introduced by Congressman Denny Rehberg.

In a recent press release, Senator Burns announced that $7 million has been secured for the St. Mary Rehabilitation and Milk River Project for FY 2007: $5 million for environmental, engineering and development of an emergency response plan; and $2 million for irrigation investigations on the Blackfeet and Fort Belknap Reservations. "We've been in constant contact with the irrigators, the Fort Belknap and Blackfeet tribes, and local governments, as well as the State of Montana, to deliver the best legislation possible to repair St. Mary's. There is a sense of urgency, due to the disrepair of the system and we need a plan in place before a catastrophic failure occurs," said Senator Burns. "I'm proud of our efforts so far, and I am fully committed to passing this legislation and securing funding to get the project started as soon as possible."

Senator Conrad Burns speaking at the March SMRWG meeting in Chinook, MT. (l-r) Larry Mires, Executive Director for the St. Mary Rehabilitation Working Group, Paul Azevedo, State Coordinator for the St. Mary Rehabilitation Project, Randy Reed, Co-Chair for the St Mary Rehabilitation Working, Group, and U.S. Senator Conrad Burns.

"A special thanks and salute to Senator Baucus for securing federal funds to address Blackfeet environmental issues and the St. Mary Siphon Bridge in 2005; and to Senator Burns and Congressman Rehberg for crafting the new legislative language to provide a permanent fix to the St. Mary and Milk River Projects in 2006," Said Larry Mires, Executive Director for the SMRWG. "This is just the beginning of a long process."

The legislation includes authorization for the US Bureau of Reclamation to perform the necessary engineering and environmental studies for St. Mary Diversion and Milk River Project facilities, develop an emergency response plan, enter into cooperative

(continued)

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agreements with the Joint Board of Control, Blackfeet Tribe and State, and initiate rehabilitation of the St. Mary Diversion and Conveyance Works. The legislation also includes a cost-share formula, and provision to develop projects on the Blackfeet and Fort Belknap Reservations. The SMRWG was charged with providing input to the State on finding a "workable solution" to rehabilitate the St. Mary Facilities before the system suffers catastrophic failure. The interests of all major stakeholders in the basin were brought into this legislation. It could not have happened without give and take by all parties involved.

The bills can be read in their entirety and tracked on line at

http://thomas.loc.gov/

by typing in the bill number.

A New Course for the Milk River Basin: Where Will Irrigators Land?

Editorial By: Matt McCann

Built over a span of 50 years, the Milk River Project has become a chaotic brew of divisions, reservations, districts, water rights, contracts, and nations operating independent of one another. At best, the chaos has inhibited organization; at worst it is a setup for disintegration. The unholy mess has left a legacy of mistrust, legal wrangling, deteriorating facilities and hobbled progress in large part due to our fragmentation. We have set up our farms to survive in an unhealthy competition for water based on century-old facilities and authorization. This leads us to the realization that the authorization like the project facilities, are old and outmoded.

Beyond the fragmented disposition of the irrigation project are unresolved issues including concerns voiced by the Blackfeet Tribe, whereupon their reservation the entire St. Mary portion of the project is located, and the Fort Belknap Indian Reservation Compact, which is predicated on a reliable water supply from St. Mary. Currently, the stipulations of the Boundary Water Treaty Act of 1909 can only be fulfilled through the St. Mary facilities. It becomes clear that the Milk River Project is the pivot upon which all other issues revolve and look to for resolutions while irrigators still pay nearly the full cost of operation and maintenance (O&M). Should a serious failure occur on a major project facility, as currently authorized, irrigators would be forced with the decision to pay to reconstruct or do without. Neither option is viable. I describe this bleak scenario not because it is hopeless, but because we must see beyond our headgates and tailwater if we are to find a solution. That is where the St. Mary Rehabilitation Working Group (SMRWG) comes in.

The SMRWG was formed in early 2004 and comprised of state and basin stakeholders to square up on the dilemmas facing the Milk River Project. The group formed under the simple premise that we all had a common interest in the stabilization of the St. Mary water supply. SMRWG successes have been measurable; the basin has ponied up over $200,000 so far. The State of Montana has to date delivered, with manpower and dollars, about $15 million. All of this has earned the attention of our Washington D. C. Delegation. Through the help of our Congressional Delegation, we have procured $8.5 million to address a multitude of environmental issues, and build a bridge that will, literally and figuratively, support future construction activities. Draft legislation has been submitted to the tune of $183 million for completion of engineering and environmental investigations, reauthorization and construction costs. To advocate our undertaking in D.C., the SMRWG became members of the Family Farm Alliance and the Montana Water Resource Association to keep our project front and center, and shed light on aging infrastructure crises across the west. The SMRWG is a microcosm of the basin and the exemplification of what can be accomplished when varied interests come together to solve a common problem.

So what does this mean to the average irrigator?

We have witnessed over the last 10 years, a four-fold increase in our O&M bill, which is the tip of the iceberg. Our O&M dollars are being spent on triage maintenance. There is no plan beyond fixing problems based on urgency, nor are our dollars being spent to maximize their effectiveness. Reclamation has suggested we turn to the state to supplement O&M for a federal project. The state has invested

over $1 million toward on-the-ground repairs over the last 10 years on Milk River Project facilities. That is one million dollars we would have had to spend, but the state is not going to fund this project forever. The checks we write to Reclamation do nothing to improve the facilities upon which our livelihoods depend. A quick soul search affirms we simply cannot afford to do it alone; that we must team up with new partners. It is unlikely that the federal government would appropriate a substantial sum to a depressed irrigation project that provides no additional benefits. But multiple benefits indeed exist; they simply aren't recognized in the law, which is why the project needs to be reauthorized. Reauthorizing the project will spread the costs of both O&M and construction repayment.

What is Reclamation doing to help?
After numerous meetings with Reclamation officials, it became quite clear that we were on our own. Reclamation will not assist for numerous reasons:
1) They have to operate under the current authorization,
2) Their participation would have a significant impact on their budget, and
3) They do not want to set a precedent for other projects in similar straits. We are bypassing Reclamation and engaging Congress directly.

Will irrigators lose control of the water supply?
Control is a perception. We have no control over endangered species requirements, tribal water rights settlements, water as it is conveyed through Alberta, illegal pumps in the river, nor do we have control over costs. If we had a handle on this project, it would not be in its current condition. The new authorization language states explicitly that the project is to be operated primarily for the purpose of irrigation. In many ways we will have more control over the water since reliability will be enhanced, resulting in fewer emergency shutdowns, attenuating drought effects, and addressing endangered species issues, which we are currently on the hook for mitigating. It will give us the ability to plan how to

address the issues in our own districts that have been festering for years.

Will the fix come free?
No, nor should it, but it will be significantly reduced. The rehabilitation and reauthorization will bring predictability and stability to costs. All indications point to a stabilization or possibly a reduction in O&M costs, coupled with a modest construction repayment contract currently estimated at $2 to $3 per acre over 40 years. In recent years, we have seen annual jumps in our O&M on this order.

Who pays for project facilities now, and who would pay after reauthorization?
There are 110,000 "Project" acres that currently pay the bulk, and several municipal water contracts that pay a small portion toward facilities O&M. The federal government also pays a calculated share that is based on flood control benefits. Irrigation, flood control and hydropower are the only authorized uses of the project. Under new authorization, the costs would also be spread among municipalities, recreation, fish and wildlife conservation and water conservation benefits. These would be considered additional public benefits and costs allocated accordingly.

In the larger scheme, and perhaps most important, reauthorizing this project opens the door for basin self-reliance and empowerment to internalize our management and revenues. Despite our propensity for rugged individualism, we have developed an unhealthy dependency on State and Federal Agencies for our needs. We realize our dire situation and need a plan that delivers us from a future of vulnerability and dependency. Hopefully we can use the State's help as a springboard for self-sufficiency and economic and environmental viability. If we are successful with reauthorization, the onus will fall upon all of us to improve our situation and lay to rest the old problems of fragmentation that work against us. Circumstances, as they exist, are not in our favor, but we do have the power to pilot a better future. Quite simply, we cannot, as a legacy to our children, allow the miscalculations of our past imperil their future.

IJC Hears Arguments

on the St. Mary/Milk River's Task Force Report

Mike Dailey, St. Mary Rehabilitation Field Coordinator

In April 2003, Montana requested the International Joint Commission (IJC) review the IJC 1921 Order (Order), which specifies how the Milk and St. Mary River waters are to be divided between Canada and the United States, arguing it does not meet the intent of Article VI of the 1909 Boundary Waters Treaty. In December 2004, after a series of public meetings in theaffected basins, the IJC appointed four members from each country to form the St. Mary /Milk Rivers Administrative Measures Task Force. The Task Force was directed to:
"…examine and report to the International Joint Commission on measures for improvements to existing administrative procedures of the St. Mary and Milk Rivers apportionment to ensure more beneficial use and optimal receipt by each country of apportioned waters."

The Task Force Report to the IJC was released in April 2006[1]. On May 24-25, meetings were held in Havre, MT and Lethbridge, AB allowing the public to express their comments on the report. The formal comment period ended June 30, 2006.

The 123-page document is brimming with history, documentation and data, and though it draws no conclusion, what is clearly evident is Montana is not receiving its entitlement under the current apportionment procedures. The report suggested that administrative procedures could be changed to compute the natural flow of the Milk and St. Mary River more accurately. It also examined how changing the apportionment balancing period — from the current bi-monthly period to a weekly, monthly, seasonal, or annual period—would affect the amount of its apportioned flow that each country received. The annual balancing period was found to offer the best potential for each country to receive more of its 1921 Order allocated share.

Montana considers an annual accounting period a good first step to utilize a greater portion of our entitlement under the Order. But the heart of the problem lies in the Order itself. The State of Montana still firmly maintains, as it did when it requested the IJC to review the Order in 2003, that the Order needs to be opened for the following reasons:

1. The three primary provisions of the first sentence of the first paragraph of Article VI of the Treaty are ignored in the 1921 Order.
It states:
"…the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan)
[1] *are to be treated as one stream for the purpose of irrigation and power,*
[2] *and the waters therefore shall be apportioned equally between the two countries,*
[3] *but in making such equal apportionment more than half may be taken from one river and less than half from the other river by either country so as to afford a more beneficial use to each."*

- The two rivers are not treated as one stream; they are apportioned separately.
- The waters are not apportioned equally as the Order gives United States considerable less water than it is entitled to in all years, and especially during dry years.
- No attempt was made to implement the third provision of the first sentence. That is, to give more than half of the water from one river to one country and less than half from the other by either country so as to afford a more beneficial use to each.

2. Under the 1921 Order, the United States entitlement of the combined flow of the Milk and St. Mary Rivers and Eastern Tributaries does not meet the above language of the Treaty. Based on the Task Force Report, the United States entitlement averaged 45% of the combined flow of the Milk and St. Mary Rivers and Eastern tributaries, which decreased to 38% to 40% during drought years for the 1950-2004 period of record (pg. 24 of Task Force Report). The Canadian entitlement averaged 55% and increased to 60% to 62% during drought years.

3. The 1921 Order has not been reviewed in 83 years. The United States tried to have the Order reviewed in 1930, but was unsuccessful. At that time, the IJC said that not enough time had elapsed. The current review is timely, and the flow data in the Task Force report indicates that the 1921 Order is not dividing the flows of the two rivers equally.

4. United States water shortages are getting worse and Canada continues to use more Milk and St. Mary River water for new irrigation. The 1921 Order was negotiated during a time when hydrological conditions may have been wetter than they are today and the information less accurate than it is today.

5. Lee and Rolph creeks are international tributaries to the St. Mary River and are excluded from the Order. The flow of these streams should be included in the apportionment calculations.

6. The Milk River, a prairie stream, frequently goes dry during the summer while the St. Mary River never goes dry. During drought years, the flow of the St. Mary River can be 10 times greater than that of the Milk River. As important, the St. Mary River flows highest during May, June and July when irrigation demands are high when Canada is entitled to the first 500 cfs or ¾ of the flow whereas, the highest flows in the Milk River can occur as early as March when the flows must be shared equally with Canada.

7. We believe a review of the 1921 Order should include:

a. An evaluation of the existing Order in light of the past 80 years of hydrologic records and apportionment information. In the Task Force Report, the Task Force agreed on the last 25 years of historical record.

b. A determination on how to better meet the language of the two apportionment sentences of Article VI in light of the evaluation of the historic record. That is, how to divide the waters equally between Canada and the United States, but still provide a prior right to each country from a different river.

c. An assessment to determine the best method for each country to fully utilize their entitlements including the use of surplus flows and the maintenance of instream flows in the St Mary River at the International Border. (A large portion of this analysis has been completed in the Task Force Report)

d. An assessment on how to better address water rights of Native Americans and First Nations.

e. An assessment on how to address the water needs of endangered species, critical habitats, recreation, and water quality.

f. An assessment on how to better address the differences in the natural hydrographs of the Milk and St. Mary Rivers in light of projected climatic change in these river basins.

The entire report can be viewed at:
http://www.ijc.org/rel/pdf/SMMRAM.pdf,
or follow the links from
http://dnrc.mt.gov/

Milk River Project Joint Board of Control Mulls Project Manager

Mike Dailey, St. Mary Rehabilitation Field Coordinator

The Milk River Project Joint Board of Control (JBC) is formed pursuant Montana Code Annotated Title 85 Water Use. The JBC has authority to hire a manager to perform duties as set out by the JBC. The JBC has activated a Project Manager Committee to look into the feasibility of hiring a project manager, determine his duties, and develop an appropriate pay/benefits package that would draw quality candidates. The goals are pending unanimous district support.

The Manager Planning Committee submitted the following proposal to the JBC on June 20, 2006:

- The Committee agreed to recommend that we set aside the $100,000 reimbursement from the Fresno Dam grant be used as seed money for a manager.
- That we reduce the $1.00 per acre earmarked for the St. Mary Rehabilitation Working Group to $0.50 per acre, and applies the other $0.50 toward hiring a project manager.
- The committee wants to apply for a Renewable Resource Grant in 2008 to help establish the manager position.
- The goal is to take over the operations and maintenance of project facilities from Fresno Dam to Glasgow.
- The committee will continue to work on a job description and advertise for applicants with a goal to have a manager by January 2007, providing the right applicant is found.

St. Mary's Canal

The Committee is comprised of Brad Tilleman (Zurich ID), Don Green (Malta ID), Wes Pankratz (Glasgow ID), and Jeff Warburton (Paradise Valley ID). DNRC and USBR are providing technical assistance. Call your representative with comments, questions or suggestions.

Representatives on the Milk River JBC:

Kay Blatter	*Chairman*	*Fort Belknap Irr. Dist.*
Wade Jones	*Vice-Chairman*	*Malta Irr. Dist.*
Don Green	*Secretary*	*Malta Irr. Dist.*
Lee Cornwell	*Member*	*Glasgow Irr. Dist*
Wes Pankratz	*Member*	*Glasgow Irr. Dist.*
Ralph Snider	*Member*	*Harlem Irr. Dist.*
Brad Tilleman	*Member*	*Zurich Irr. Dist.*
Jeff Warburton	*Member*	*Paradise Valley Irr. Dist.*
Cole Maddox	*Member*	*Alfalfa Valley Irr. Dist.*
Joe Nicholson	*Member*	*Dodson Irr. Dist.*

Milk River Water Supply

August 2, 2006
By Jeremy Giovando, USBR

The storage for the Milk River Project is currently above average and appears very favorable for the rest of this irrigation season. Storage for all three reservoirs, Lake Sherburne, Fresno and Nelson Reservoirs, are near to above normal for this time of year. Releases from Lake Sherburne were initiated on March 3, while St. Mary Canal diversions were initiated on March 10. Fresno Reservoir releases were increased on April 4 to begin moving water downstream to Nelson Reservoir. Water deliveries from Nelson Reservoir began on April 25.

March through July streamflow conditions have been near to above average in the St. Mary Basin, due to improved snowpack. During this time period the inflow into Lake Sherburne was 105% of average, while inflow to Fresno was approximately 95% of average.

The water supply and streamflows were also improved due to the precipitation event that occurred in mid-June in the St. Mary basin which totaled approximately 4-6 inches over a few days. This caused significant increases in streamflows and caused Lake Sherburne to rise over 4 feet in three days. Overall water supply conditions should allow for a full water supply for the Milk River Project water users.

Nelson Reservoir

Storage as of August 2, 2006			
Reservoir	**Storage (acre-feet)**	**% Normal**	**% Full**
Lake Sherburne	53,200	113	80
Fresno	48,000	108	52
Nelson (active)	32,000	94	55

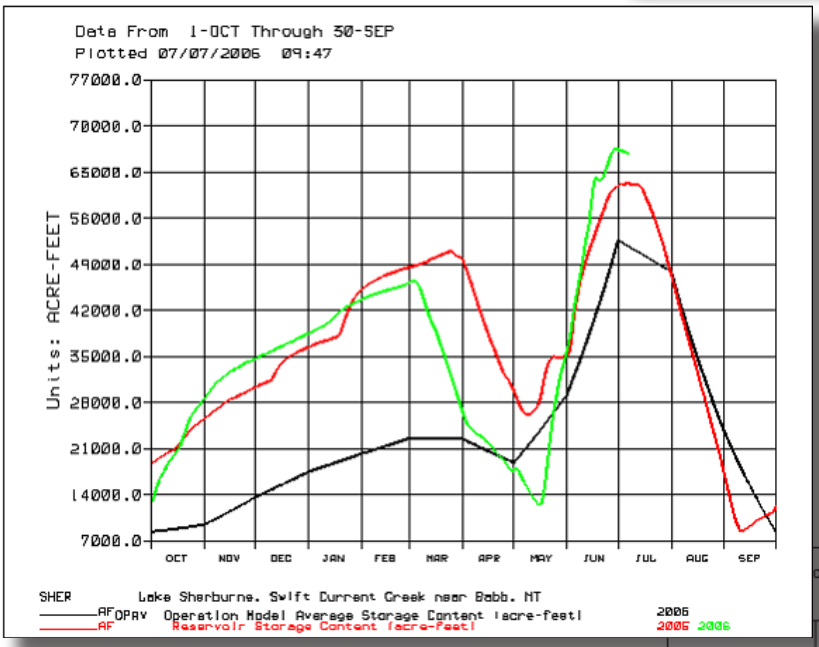

Figure 1:
Lake Sherburne Snowpack

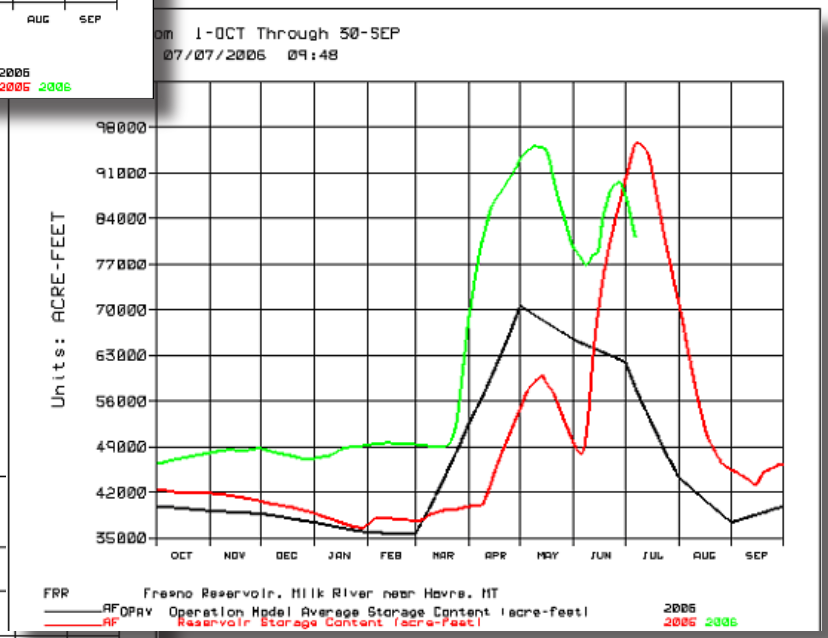

Figure 2:
Fresno Reservoir Storage

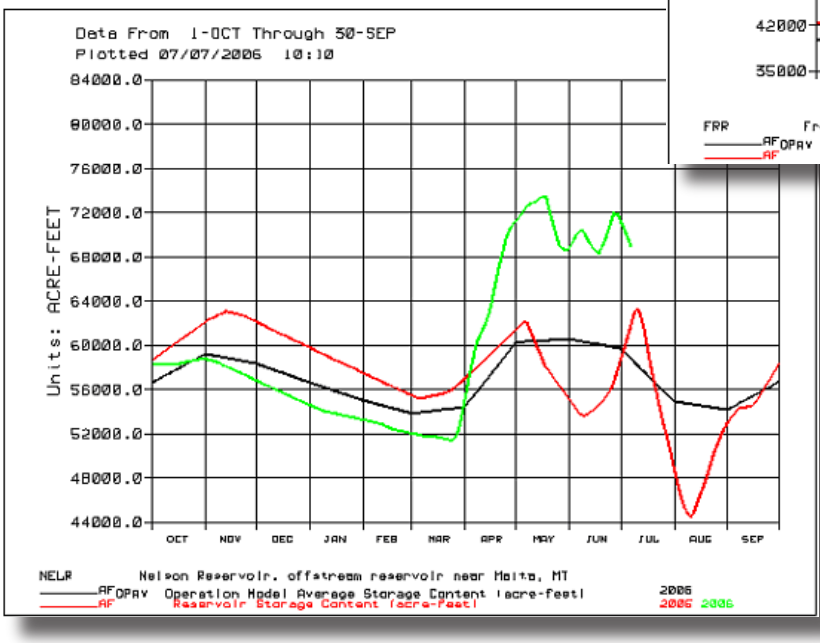

Figure 3
Nelson Reservoir Storage

(from page 7)

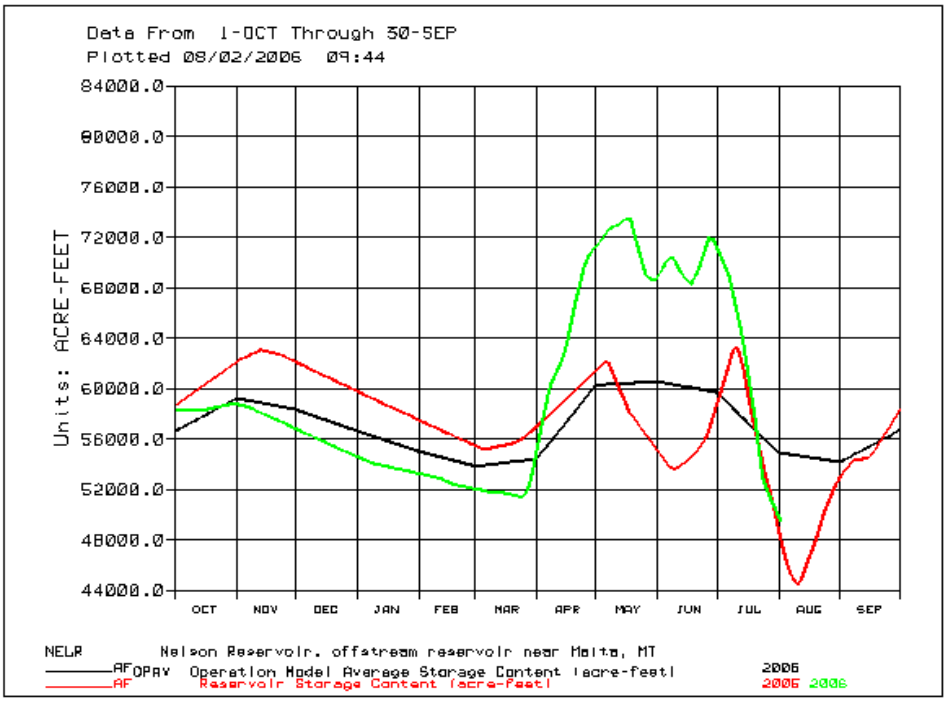

Figure 3
Nelson Reservoir Storage

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